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ABSTRACT

The resource book on state due process provisions in special education is a compilation of materials received from the state education or special education directors who responded to letters sent to each of the 50 states requesting copies of current administrative provisions on the subject. Materials, which are provided in sections for each of 48 states and the District of Columbia, include the following: procedural safeguards (Alabama), conditions and standards relating to identification and placement (Arizona), rules for the administration of the Handicapped Children's Educational Act (Colorado), Connecticut laws concerning children requiring special education, an administrative manual for exceptional child programs (Delaware), due process procedures for Idaho's exceptional students, the Kansas state plan for special education, Kentucky administrative regulations, an excerpt from special education rules and regulations reference manual (Montana), New Jersey administrative code, administrative hearing procedures (New Hampshire), special education eligibility process (New Mexico), program planning for handicapped students (North Dakota), proposed due process safeguards (Ohio), guidelines for planning educational facilities (Tennessee), delivery of services in Virginia, and West Virginia's state plan amendment. (SBH)

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DUE PROCESS IN SPECIAL EDUCATION: RESOURCE BOOK

Lawrence Kotin, Esq., and Nancy B. Eager, Esq.
Massachusetts Center for Public Interest Law

BEST COPY AVAILABLE

Research Institute for Educational Problems,
29 Ware Street, Cambridge MA 02138, February, 1977

EC100858

INTRODUCTION

This resource book on state due process provisions in special education is a compilation of materials received from the state education or special education directors who responded to letters sent to each of the fifty states requesting copies of current administrative provisions on the subject. The information contained in these materials served as the basis for the collection of charts entitled, "Due Process Provisions in Special Education: State Administrative Provisions," and the article entitled, "Due Process in Special Education: Legal Perspectives—The State of the States, P.L. 94-142 and Systems Design." The charts and article are included in the publication, "Due Process in Special Education: A Legal Analysis." The charts summarize the state statutes, regulations, guidelines and appropriate Federal-state plans on due process in special education, and the article analyzes these materials in terms of the considerations relevant to the manner in which the due process requirements may be satisfied. This resource book contains the actual language and documents from which these analyses were developed.

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March 6, 1975 Alabama

CERTIFICATION OF STATE EDUCATION AGENCY OFFICIAL AUTHORIZED TO SUBMIT THE STATE PLAN AMENDMENT FOR FY 1975 UNDER PART B, EDUCATION OF THE HANDICAPPED ACT, AS AMENDED BY P.L. 93-380

1. I hereby certify that the attached State plan amendment has been adopted by Alabama State Department of Education on March 6, 1975, in accordance with 45 CFR 100b.15 (Governor's Comments) and 45 CFR 121.108 (Publication and Opportunity for Comment).

2. I further certify that the State plan submitted under the provisions of P.L. 91-230, together with the attached amendment to the plan, constitute the basis for the operation and administration of the activities to be carried out in the State under Part B of the Education of the Handicapped Act, as amended by P.L. 93-380.

LeRoy Brown
Signature

3/7/75
Date

LeRoy Brown, State Superintendent of Education
Name & Title of Official

CERTIFICATION OF STATE ATTORNEY GENERAL OR OTHER APPROPRIATE STATE LEGAL OFFICER

I hereby certify that:

1. The Alabama State Department of Education has authority under State law to submit a State plan pursuant to Part B of the Education of the Handicapped Act (P.L. 91-230, Title VI) and to administer or supervise the administration of the plan;

2. Said agency has authority under State law to carry out, directly or through local educational agencies, the activities described in the plan; and

3. All plan provisions are consistent with State law,

William J. Baxley
(Signature)

3/11/75
(Date)

William J. Baxley, Attorney General
Name & Title of State Legal Officer

II. PROCEDURAL SAFEGUARDS
(EHA-B: 613(a) (13)

Following are the procedures adopted by the Alabama State Department of Education (SEA) for insuring that handicapped children and their parents are guaranteed procedural safeguards in decision regarding identification, evaluation, and educational placement of handicapped children.

A. Due Process Guarantees. The following due process procedures have been adopted by this SEA to comply with Section 613(a)(13)(A)(i)-(iv) of EHA-B, as amended by P.L. 93-380:

1. The following definition will be used henceforth as indicated.

   a. Parent. The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures set out herein. The term "parent" also includes the child if he has reached the age of majority.

   b. Notification. Terms such as "notice" and "notification" include (1) written statements in English and in the primary language of the parent's home, and (2) oral communication in the primary language of the home.

   c. Impartial Hearing Officer. The term "impartial hearing officer" means a person or tribunal of persons assigned to preside at a due process hearing and whose duty it is to assure that proper procedures are followed and that the rights of the parties are protected. An impartial hearing officer must be:

1) unbiased --- not prejudiced for or against any party involved in the hearing;

2) disinterested --- not having any personal interest at stake in the outcome; and

3) independent --- may not be an officer, employee or agent of the LEA. (Such person(s) should be employed by the SEA, either at the regional level or in the central office.)

d. "Days" -- means calendar days.

e. "Surrogate Parent" -- means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

2. Parental Permission for Testing. When there is reason to believe that a preschool or school age child is in need of special education services, and such a child becomes the subject of individual evaluation procedures (formal testing, informal assessment, observation), then advanced written permission for such procedures to be used should be obtained from the parents. The letter requesting permission for such testing should contain the following: ✓

-- The reasons the evaluation has been requested, and the name of the person who initiated the process,

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-- a statement of the right to refuse to permit the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evaluation,

-- a statement of the right to review all relevant records and to be fully informed of the results of the evaluation, and

-- a declaration that the child's educational status will not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.

a. Parents Refusal. If the parents refuse to give permission, the LEA should attempt to seek resolution through an individual conference(s). If the parents still refuse to allow the proposed evaluation, the LEA should either accept the decision or appeal to the (State) hearing officer. On appeal, a full adversarial hearing, meeting the requirements set out below, will be held. In such a hearing, the burden of proof is on the LEA to demonstrate that the continued placement of the child is so dangerous to his/her health or safety or so disruptive to the program for the other children that the initiation of the evaluation procedure is justified as the first step to a special program placement.

b. Parents Failure to Respond. If a parent fails to respond at all to the LEA's repeated attempts by means in addition to regular mail (e.g., telephone, home visit) to obtain consent for evaluation, then the LEA can proceed with the evaluation of special needs. The hearing officer should provide notice to the parent regarding his/her full due process rights in this proceeding. In order for the LEA to prevail, it must:

(1) demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed; and

(2) establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

3. Prior Notice. Whenever a change is proposed in a child's educational program (including proposed changes resulting from periodic reviews), or when a parent's request for a different placement for the child is denied, the LEA must notify the parent fifteen (15) days in advance of the proposed action. Such notice should be presented orally and in writing, via certified mail. The written notice shall:

a. Describe in detail the proposed or requested action and the reasons why such action is deemed appropriate or inappropriate for the child.

b. Specify any tests or reports upon which the proposed or requested action is based.

c. State that school files, records, and reports pertaining to the child will be available for inspection and copying at reasonable cost.

d. Describe in detail the right to obtain a due process hearing if there are objections to the proposed or requested action, including a description of all of the rights regarding procedures at such a hearing.

e. List those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel themselves.

f. Indicate the opportunity to obtain an independent evaluation of the child at public expense and including the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost.

g. When the proposed or requested action involves placement or denial of placement, describe any alternative educational placements which are similar to regular class settings than is the proposed placement, and give the reasons why such alternative placements are not appropriate for the child.

h. Describe the procedures for appealing the decision resulting from the due process hearing.

i. State that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. (In an emergency situation where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the hearing examiner).

4. Impartial Due Process Hearing. Following written notice and upon request for a hearing, the procedures set forth below should be followed:

a. Prerequisites to a hearing. Before the actual hearing is conducted, the following steps shall take place:

1. Prior notice as described in Section A-3, preceeding, should be provided to the parents.

2. The parents shall be allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.

3. The parents must be provided the opportunity to obtain an independent evaluation of the child's educational needs at public expense.

4. An impartial trained hearing officer shall be appointed to preside at the hearing.

5. The hearing officer shall provide to the parents and to the officials of the LEA notification as to the time and place of the hearing, which should be a time and place reasonably convenient for the parents.

6. The parents shall be given the opportunity to exercise their right to compel the attendance at the hearing of any officer, employee or agent of the local education agency or State Education Agency who may have testimony or evidence relevant to the question of the needs, abilities, proposed process or status of the child; and

7. Steps shall be taken to assure that the child will remain in his/her present educational placement until the hearing officer enters a decision following the hearing (except that in emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by written order of the hearing officer).

b. Procedures at the hearing. The due process hearing must be conducted in accordance with the following procedures:

1. The hearing officer will preside at the hearing and should conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony;

2. The parents and the LEA may have representatives, including ✓

but not limited to legal counsel or other professional persons, attend the hearing;

3. The hearing should be closed to the public unless the parents request an open hearing;

4. The parents and the LEA, or their respective representatives, have the right to present evidence and testimony;

5. The parents and the LEA and their respective representatives should have an opportunity to confront and question all witnesses at the hearing;

6. If the child is over the age of majority, he or she should have the right to attend the hearing;

7. If the child has not reached the age of majority, the parents have the right to determine whether he/she should attend the hearing, except that upon a finding by the hearing officer that attendance by the child would be harmful to his/her welfare, the child may be excluded from portions of or the entirety of the hearing;

8. The burden of proof as to the appropriateness of any proposed placement, as to why more normalized placements could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the local educational agency;

9. A tape recording or other verbatim record of the hearing should be made.

10. At all stages of the due process procedures, interpreters for the deaf and when needed interpreters fluent in the primary language of the home shall be provided at public expense.

c. Decision of the hearing officer. The hearing officer's decision should be issued in accord with the following requirements:

1. Such decision shall be in writing and should be sent by certified mail to the parents, to the LEA, and to their respective representatives;

2. The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed education program, it should include a statement as to what is an adequate and appropriate educational program for the child. If the decision is to approve a proposed educational program it should include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs;

3. The decision of the hearing officer must be based solely on evidence and testimony presented at the hearing;

4. A summary of the proceedings at the hearing shall be made, into which should be included any materials or statements specifically requested by any of the parties to appear in the record and such summary should be made available to the parties to the hearing;

5. Upon request of the parents or the LEA, a copy of the tape recording or other verbatim record of the hearing shall be transcribed and provided;

6. A statement shall be included that the decision of the hearing officer is binding upon the parents or the child if over the age of majority, and upon the local education agency, its officers, employees and agents, subject to procedures for administrative or judicial appeal.

7. The decision of the hearing officer should include a

statement of the procedures, to be used for appealing such decision.

d. Appeals. Appeals may be initiated by a parent or by the LEA. Such appeal of a decision of the hearing officer must be heard by the State Board of Education or by its impartial designee within twenty (20) days of the request by a parent or LEA. Should the parent or LEA reject the ruling of the State Board of Education or its designee the parent or LEA has twenty (20) days in which to file an appeal through the courts. All appeals must be conducted in accordance with the due process procedure or other statutes governing appeals of administrative proceedings.

NOTE: Generally, if parents reject the decision of the hearing officer at the initial hearing, such rejection should automatically constitute an appeal (1) to the State Board of Education or its designee, and, subsequently (2) to the courts. Thus, it is not necessary for the parents to separately request such an appeal(s).

5. Surrogate Parents. In order to provide every child eligible for a public education with the protection of procedural due process, even under circumstances where a child's parents or guardians are not known, are unavailable, or the child is a ward of the state, each child should be assigned a parent surrogate according to the following procedures:

a. Recruitment and Training. The SEA should recruit and train persons who can serve as surrogate parents, and maintains a registry of eligible persons, and compensate or make arrangements for the compensation of such persons when served.

b. Selection by Standing Board. The SEA must select a group of

ALASKA DEPARTMENT OF EDUCATION OCTOBER 1975

SPECIAL EDUCATION HANDBOOK

THE SEAL OF THE STATE OF ALASKA

PROCEDURES FOR THE ESTABLISHMENT AND OPERATION OF SPECIAL EDUCATION PROGRAMS

Develop an Annual Plan of Service

Components of the Annual Plan

The Annual Plan of Service and any subsequent amendments will be considered a working agreement between the local school district and the Department of Education regarding services for exceptional children. This plan will include:

1. A statement of the district rationale regarding the overall goals for its special education program.

2. A description outlining the criteria and procedures utilized for screening, identification, diagnosis, and placement of exceptional children in appropriate special education programs and services.

3. Information regarding the numbers and kinds of exceptional children currently receiving special education programs and services, and information regarding the numbers and kinds of identified exceptional children for whom special education programs and services are being planned the next school year.

4. A statement of the procedures planned for parental consent and involvement.

5. A description of the various special education placement options currently available or anticipated.

6. A statement of the types and number of personnel within existing or anticipated special education programs.

7. A description of the methods and procedures used to evaluate the performance of individual children receiving special education programs and services, as well as the effectiveness of existing or anticipated special education programs.

8. A description of the resources, support, and technical assistance needed by the school district to initiate, strengthen, expand, and evaluate special education expenditures.

9. A detailed estimate of expected enrollments and special education expenditures.

10. A description of the administrative structure to comply with the forms and report, required in Chapter 1, page 2 and the signature by the superintendent and chairperson of the school district.

Employ Certified Personnel

Requirements for teachers of exceptional children

Special Education teachers employed to teach exceptional children mus possess a valid Alaskan teaching certificate (Type A or C) with appropriat endorsement for their special education assignment, or they must receiv departmental approval from the Commissioner of Education (See below fo departmental approval procedures).

Special Education support personnel such as speech therapists, psychologists and social workers must hold a Special Services Certificate, Type C, in their field, where appropriate, or a teaching certificate, Type A, with special-field endorsement.

Special Education Administrators must hold either an Administrativ Certificate, Type B, endorsed in Administration of Special Education, or Regular Teaching Certificate, Type A, endorsed in Special Education with ar Administrative Certificate, Type B.

Special Education Classroom Aides need not hold a state certificate bu should evidence competencies in working with exceptional children an should work under the direct supervision of certified or approved specia education personnel.

Departmental Approval procedures

Teachers or administrators who are responsible for exceptional children an who do not possess a valid Alaskan teaching certificate with appropriat endorsement for their professional assignment must be approved by th Department of Education. The teacher obtains departmental approval b submitting in writing, to the Department of Education, Office fo Exceptional Children, the following:

1. A description of the teacher training program they are enrolled in tha will lead to certification appropriate to their assignment.

2. An indication they will complete the training program as described i three years or less.

3. Confirmation of said enrollment from an accredited institution o higher learning.

4. A letter from the Superintendent of the LEA that describes th competencies of the teacher in question to instruct exceptional children an indicates his approval of the professional assignment and his persona assurances that all other avenues of teacher recruitment have bee exhausted.

Establish and Implement Systematic Procedures for Initial Child Identificatio

Coordinated efforts are important in child identification

The child should be the focus of concern for special education. Each schoo district designates responsibility and develops procedures for initi identification of all district children ages 3-19, whether enrolled in school c not, who may be in need of special education. Identification procedure should involve the coordinated efforts of all appropriate agencies, an participation by individual citizens should be encouraged. Each school district should maintain information regarding special education programs and services and make this program information available to public and private agencies, parents of exceptional children, private physicians, and other interested persons upon request. Inital identification procedures may include: systematic continuous screening process, census or surveys of in-school and out-of-school children, or referrals from parents, medical personnel, school personnel, community agencies, legal authorities, and other interested persons.

Establish Child Study Team(s)

Child study teams should give individual attention to each child

When a child has been identified as one who will potentially benefit from special education programs and services, it will be the responsibility of the school district to initiate further review and evaluation of the child's education needs before an educational placement is made. A multi-disciplinary team(s) shall provide educational evaluations of exceptional children and make appropriate educational recommendations.

Each school district or cooperating school district shall provide at least one Child Study Team which will meet on a regular basis. School districts may have more than one Child Study Team depending on the size of the district and the number of children to be served. The composition of the Child Study Team(s) may vary from child to child depending on the nature of the exceptionality, but team consistency for any given child should be maintained.

The Child Study Team should be composed of at least three members who might include the school superintendent or his designated school administrator, a regular classroom teacher, and at least one professional specialist involved in assessment of the child's performance (physician, psychologist, social worker, school nurse, special education teacher, diagnostic prescriptive teacher, etc.) Other persons who may also be included whenever appropriate include the child's parents or guardian, school principal, special education director, and other persons involved in evaluation of the child. A chairperson for the Child Study Team should be selected to review referrals and conduct meetings of the Team.

Functions of the Child Study Teams

The Child Study Teams conduct educational evaluations by collecting and examining existing school and other records to determine if the child is in need of further assessment, conducting or making arrangements for educational evaluations of children referred for special education, and by reviewing the results of the educational evaluations of children referred for special education.

Follow-up and re-evaluation activities of the Child Study Teams include:

Periodically reviewing the educational progress made by exceptional children to determine the appropriateness of the special education placement; making necessary changes in educational placement, providing appropriate follow-up of children returning to the regular education programs; and conducting an annual review of all students receiving special education programs and services.

Conduct Educational Evaluations

Components of an Educational Evaluation

Prior to special education placement and at least once per year thereaft each exceptional child must be given an educational evaluation (See Chap 6 of this handbook). It is the responsibility of each local school district comply with the necessary requirements of an educational evaluati conducted by multidisciplinary Child Study Teams.

The extent of an educational evaluation depends on the nature and severi of the child's exceptionality. An education evaluation should include t following:

1. Description of the child's current functioning in the school, communit and home.
2. Measures of social and adaptive behavior.
3. Assessment of educational skills and deficits.
4. Evaluation of speech and language development.
5. Evaluation of child's cognitive abilities.
6. Medical developmental history and current health status.

Protective features required in an Educational Evaluation

Assessment instruments and procedures for an educational evaluation shoul be behaviorally oriented and should be selected to measure appropriat behaviors. Standards for interpreting test results must reflect general cultur expectations, but must also reflect particular local and individu expectations, including those related to ethnic identification.

Parents or guardians must be given the right to appeal the results or decision derived from, an educational evaluation and the right to other du process regulations within the Administrative Procedures Act. [AS 14.30.19 (c)]

Confidentiality must be secured

Educational evaluation results must be maintained as confidential. However they must be available for review by the child's parents or guardians and th Department of Education upon request. Assessment and evaluation must b conducted by appropriate and qualified personnel and should result i classifications of children for funding and reporting purposes as well a defining appropriate educational programming. Educational evaluation should not categorize and/or label children except for funding and reportin purposes.

Special Education Placement

Information needed for placement

After the Educational evaluation has been completed, the Child Study Team will meet to discuss the results and make recommendations for educationa programming. The Child Study Team evaluation must include a summary of the assessment findings as well as the following information recorded on an appropriate form and signed by all team members:

1. Determination of eligibility for special education placement.

2. Determination of the type of exceptionality to be used for reporting purposes.

3. Description of educational recommendations including long and short-term objectives as well as suggestions for on-going assessment of the child's functioning.

4. Recommendations for most appropriate special education placement.

Protective features required of Special Education Placement

When making an educational placement, every effort should be made to place the child within a minimal time between initial identification and educational placement. Placement decisions must also result in the provision of services in the least restrictive environment. It is expected that exceptional children will, whenever possible, be educated in the regular education program with appropriate Special Education Support services.

All records concerning educational placement decisions must be treated as confidential, but must be available for review by the child's parent or guardians and the State Department of Education. Written consent of parents or guardians must be secured prior to special education placement of any child, and parents or guardians must be given the right to appeal placement decisions. (See next section)

Due Process Procedures

Parents must have all pertinent data

Within twenty (20) days after completion of the educational evaluation and proposed special education placement based thereon, the school district must, prior to effectuating such placement, give the parent or guardian written notice informing them of the following:

1. The completion of the educational evaluation and a description of the proposed placement.

2. The right upon request to have, at a time and place convenient to the parent or guardian, a consultation with the school district concerning the evaluation and proposed placement.

3. The right to obtain an independent evaluation and upon request, a hearing to resolve any substantial discrepancy between (a) the educational evaluation and/or between (b) the proposed placement sought by the parent or guardian.

Procedures for requesting a hearing

If the parent or guardian believes that the educational evaluation of his child is in error, he may request an independent evaluation of the child. The request should be directed to the district superintendent of his designee. All costs of the independent evaluation are to be borne by the child's parents. In cases where it is determined that said parents are unable to pay, the Commissioner of Education may authorize the state to pay all expenses. If a substantial discrepancy exists between (a) the evaluation by the school district and the indepenedent evaluation, and/or between (b) the proposed placement and placement sought by the parent or guardian, the parent or guardian may request a hearing to resolve such discrepancy and determine the appropriate educational placement for the child. If such a request fo hearing is made to the local school superintendent, notice of the hearing w be given in writing to the parent or guardian of the child. The notice w include a detailed discussion of the proposed placement, and a specificati of all tests, reports, records, and other materials considered in t formulation of the educational evaluation, as well as other factors, if ar upon which the proposed placement is based. The notice should also speci the right of the parent or guardian to be represented at the hearing by le counsel; to examine the child's school records before the hearing, includi any tests, reports, or other materials considered in the formulation of t educational evaluation and other factors, if any, upon which the propo placement is based; to present evidence, including expert medic psychological and educational testimony; and, to confront and cross-exami any school official, employee, other witness, or agent of the school distri who may have evidence upon which the educational evaluation and propos placement was based. The time and place of the hearing will be set forth the notice.

Components of the "Notice of Hearing"

Specific hearing procedures

The hearing should be at a time and place reasonably convenient to t parent or guardian, and must be scheduled no later than forty-five (45) da after receipt of the request for hearing from the parent or guardian. T hearing will be closed unless both parties request an open hearing.

The chairman of the local school board will appoint a hearing officer who in his opinion an unbiased and impartial person, and who (a) did not direct participate in the formulation of the educational evaluation or the propose placement, and (b) does not occupy a position which is, directly c indirectly, under the jurisdiction of the school official who made th decision for the proposed placement or in any way supervised or otherwi participated in the educational evaluation process.

The decision of the hearing officer will be based solely upon the evidenc presented at the hearing. The school district must bear the burden of proc as to all facts and as to the appropriateness of the educational evaluation ar the proposed placement.

A tape recording or other record of the hearing will be made and mad available to the parent or guardian or his counselor for a period nc exceeding thirty (30) days.

At a reasonable time prior to the hearing, the parent or guardian, or h counsel will be given access to all official records of the school distric pertaining to his child, including any tests, reports or other materia considered in the formulation of the educational evaluation and othe information, if any, upon which the proposed placement is based.

The parent or guardian, or his counsel, will have the right to present evidence and testimony at the hearing, including expert medical, psychological or educational testimony. Pending a determination by the hearing officer, the school district will take no action to effectuate the proposed placement if the child's parent or guardian objects to such action. Such objection must be in writing and postmarked within five (5) days of the receipt of the notice of hearing above.

Within thirty (30) days after the hearing the hearing officer must render a decision in writing determining the appropriate educational placement for the child. This decision will include findings of fact and will be filed with the school district board and sent by registered mail to the parent or guardian and his counsel. The decision is final and binding on all parties unless appealed within 30 days as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska. [Authority; (AS 14.30.191(b)(c)]

Maintain Appropriate Records of Pupil Progress as Well As Other Appropriate Special Education Program Data

Data required of local districts

Each local school district is required to maintain descriptive information about the quantity and quality of special education programs for review by the State Department of Education. This information will include but is not limited to the following:

A summary of each student's evaluation results.

Signed parental permission form for placement.

Pupil enrollment data.

Continuous pupil progress records.

Summary of special education program progress and effectiveness.

Information concerning the status of special education personnel.

Financial data.

Other information requested by the State Department of Education.

SPECIAL EDUCATION
CONDITIONS AND STANDARDS
RELATING TO IDENTIFICATION AND PLACEMENT

CAROLYN WARNER, SUPERINTENDENT
ARIZONA DEPARTMENT OF EDUCATION
1535 WEST JEFFERSON STREET
PHOENIX, ARIZONA 85007

4/28/76

3.02 Parents or guardians may request a referral of their child for an evaluation.

3.03 A student may request a referral for an evaluation.

IV. EVALUATION

4.01 An evaluation appropriate to the child's educational problems shall be conducted after determining the child's primary language.

a. For children whose problems appear to be limited to impairment of articulation, voice, or fluency, the evaluation shall include but need not be limited to:

- i) A current hearing screening.
- ii) A review of the child's academic history and classroom functioning.
- iii) An assessment of the child's functional communication skills.
- iv) An assessment of the child's speech problem by a certificated Speech and Language Therapist.

b. For children who are homebound or in a hospital, the evaluation shall include but need not be limited to:

- i) Certification by a competent medical doctor.
- ii) An assessment of the child's current educational level.
- iii) Such specialized evaluations as are required to understand the specific problem(s) exhibited by the homebound or hospitalized child.

c. For all other children, an evaluation shall include but need not be limited to:

- i) Obtaining information regarding the developmental history and cultural background of the child.

If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language, and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior, with findings from a visit to the child's home. Such visit shall occur only with the consent of the parent or guardian.

ii) A current medical history and health status report.

iii) A current vision and hearing screening.

iv) An educational evaluation, with review of the child's academic history.

4.02 The intensity of these evaluative processes and the introduction of additional evaluative techniques shall be determined by the nature and severity of the child's problems.

a. At a minimum, the following specialized evaluations are required:

i) To establish the child's eligibility for a program for the Mentally Handicapped or Learning Disabled, a complete psychological examination, including a comprehensive intellectual assessment test, shall be required. Such psychological examinations shall be administered by one or more of the following: a certified school psychologist, certified assistant school psychologist, certified psychometrist, or a licensed psychologist. However, intelligence tests shall not be the exclusive evaluation device in considering a child for placement in classes for the handicapped.

ii) For placement in a program for the Emotionally Handicapped, a comprehensive psychological evaluation by one or more of the following: a certified school psychologist, a licensed psychologist, and/or a licensed psychiatrist.

iii) For placement in a program for the Hearing Handicapped, a complete audiological evaluation. It is also recommended that an otological examination be given prior to placement of a child in a program for Hearing Handicapped.

b. A child with visual impairment, a physical handicap, or multiple handicaps which include a physical handicap shall have a medical certification to establish the severity and implications of the impairment.

4.03 If a child's primary language is determined to be other than English, the school district shall follow one or more of these procedures:

a. Use an evaluator fluent in the child's primary language and in English.

b. Use an interpreter to assist with language and testing.

c. Use test instruments which do not stress spoken language and which are considered valid and reliable performance measures of functioning.

4.04 In lieu of one or more parts of the evaluation to be done by the local school district, a current evaluation of the child which has been conducted by a comparable professional outside the educational system may be acceptable for the determination of the child's eligibility for special education. The district shall be responsible for reviewing the results of such an evaluation and for providing whatever additional or supplemental evaluation services are required to properly determine the placement of the child.

4.05 The evaluation of a child being considered for special education placement shall be completed within 60 school days of the referral.

a. If this cannot be accomplished despite the reasonable efforts of the district to do so, the parents shall be notified and given an expected date when the evaluation will be completed.

b. When the evaluation must be delayed for more than 90 school days, the district shall notify the Department of Education and request whatever assistance is within the authority of the Department to provide.

4.06 To establish eligibility for placement in a program for the Gifted, the following definitions and qualifications shall apply:

a. "Gifted" means a child of lawful school age who, due to superi~~or intellect,~~ advanced learning ability, or both, is not afforded an opportunity for otherwise attainable progress and development in regular classroom instruction, special ancillary services, or both, to achieve at levels commensurate with his intellect and ability.

b. A gifted child shall demonstrate achievements and/or potential ability in one or more of the following areas: (1) creative or productive performance; (2) specific academic aptitude -95th percentile or above on standardized achievement tests in one or more subject areas; and (3) general intellectual ability - I.Q. 130 or above, based on an individualized testing program.

c. To place a child in a program for the gifted, written parental permission must be obtained.

V. PLACEMENT

5.01 Following the evaluation of a child for whom special education placement is being considered, a multi-disciplinary conference or conferences shall be convened.

a. The participants in this conference or conferences shall include but need not be limited to:

i) The administrator or his designee.
ii) The person responsible for administering or conducting special education courses in the school or school district.
iii) A teacher who has been instructing the child (provided that the child has been in school).
iv) Personnel involved in the evaluation of the child or those persons reviewing outside evaluations.
v) The parents or guardian of the child, unless they have given written indication that they do not wish to participate.

vi) If mini-conferences are held, all previously mentioned must be contacted but only the professional personnel involved in the evaluation, an appropriate teacher, and one of the others mentioned previously must meet together in a formal conference.

5.02 The purpose of the multi-disciplinary conference shall be to discuss and develop understanding of the results of the evaluation, the child's eligibility for special education placement, and the proposed placement or alternative programs, if any.

The parent or guardian shall be informed of their rights to obtain an independent evaluation, assurance that placement will not be changed without their consent, the right to review of placement and records, and their right to withhold or withdraw their consent to special education placement. A voice recording may be made of the explanations and the parents' or guardian's acknowledgement that they understand.

5.03 The results of the evaluation and the multi-disciplinary conference shall be submitted in writing to the administrator, or the person designated by him as responsible for special education. (ARS 15-1013.c) The report shall be maintained as a part of the student's records.

5.04 Eligibility for special education instructional placement shall be determined among those persons involved in the conference, other than the parents, who will be required to authorize placement, and according to all of the following criteria:

a. The child has an educational handicap which is manifested by his/her inability to achieve otherwise attainable progress or development in the regular education program.

NOTE: Difficulty in writing, speaking, or understanding the English language due to an environmental background wherein a language other than English is spoken primarily or exclusively shall not be considered a sufficient handicap to require special education. (ARS 15-1011.4)

b. This educational handicap is based on the presence of one or more of the following handicapping conditions:

i) "Educable Mentally Handicapped" means a child who, because of his intellectual development as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes is incapable of being educated effectively through regular classroom instruction, but who is capable of achieving a degree of proficiency in basic academic skills and as a result of special education may become economically productive and socially adjusted. (ARS 15-1011.3.a)

ii) "Trainable Mentally Handicapped" means a child who, because of his intellectual development, as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes, is incapable of being educated in regular classroom instruction or educable mentally handicapped classes, but who is capable of benefiting from the school experience. (ARS 15-1011.3.i)

iii) "Emotionally Handicapped" means a child who, because of social or emotional problems as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes, is unable or incapable of meeting the demand of regular classroom programs in the public schools and requires special classes or special services designed to promote his educational and emotional growth and development.

iv) "Hearing Handicapped" means a child who has a hearing deviation from the normal, as determined pursuant to Section 15-1013 of the Arizona Revised Statutes, which impedes his educational progress in the regular classroom situation and whose intellectual development is such that he is capable of being educated through a modified instructional environment. (ARS 15-1011.3.c)

v) "Visually Handicapped" means a child who has a vision deviation from the normal, as determined pursuant to Section 15-1013 of the Arizona Revised Statutes, which impedes his educational progress in the regular classroom situation and whose intellectual development is such that he is capable of being educated through a modified instructional environment. (ARS 15-1013.3.[illegible])

vi) "Physically Handicapped" means a child who has a physical handicap or disability, as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes, which impedes his educational progress in the regular classroom situation and whose intellectual development is such that he is capable of being educated through a modified instructional environment. (ARS 15-1011.3.f)

vii) "Speech Handicapped" means a child whose speech differs, as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes, to the extent that it calls attention to itself, interferes with communication, or causes the child to be maladjusted.

viii) "Specific Learning Disabled" means the condition of a child who exhibits a significant discrepancy between ability and achievement as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes. The specific learning disability may be manifested by perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, but excluding learning problems which are due primarily to visual, hearing, or motor handicaps, mental retardation, emotional disorder, or to environmental disadvantage. (ARS 15-1011.3.g)

ix) "Multiply Handicapped" means a child who has serious learning and developmental problems resulting from multiple handicapping conditions as determined by evaluation pursuant to Section 15-1013 of the Arizona Revised Statutes, and who cannot be provided for adequately in a regular class.

x) "Homebound or Hospitalized" means a student who is capable of profiting from academic instruction but is unable to attend school due to illness, disease, accident, pregnancy, or handicapping conditions, who has been examined by a competent medical doctor, and is certified by that doctor as being unable to attend regular classes for a period of not less than three months. (ARS 15-1011.3.d)

5.05 In making recommendation for special education placement, the participants in the multi-disciplinary conference shall adhere to the following:

a. To the extent practicable, handicapped children shall be educated in the regular class. Special classes, separate schooling, or other removal of handicapped children shall occur only if, and to the extent that, the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily.

b. No child may be placed in a special education program unless the personnel providing the program or services meets the standards for certification or other endorsement established by the State Board of Education.

5.06 On a form which is written both in the language of the home and in English, the parents or guardians of the child shall indicate by signature their understanding of the placement, their understanding of their rights, and their agreement/disagreement concerning the proposed placement. When written documentation is not possible because of the absence of a written language system, parental agreement/disagreement may be documented by a tape recording.

5.07 The school administrator shall place the child, except that no child shall be placed or retained in a special education program without the documented approval of his parent or guardian.

5.08 Pursuant to authorization for the placement, the recommended programs and services shall be provided as soon as possible, but not later than 90 school days (unless such placement would occur after May 1). Failing to establish district placement within that time, districts shall place children in programs in agreement with other districts or via contractual agreements with private agencies. When the placement must be delayed for more than 90 school days, the district shall notify the Department of Education and request whatever assistance is within the authority of the Department to provide.

VI. REVIEW OF SPECIAL EDUCATION PLACEMENTS

6.01 All special education placements, including those in private schools, shall be made on trial basis and reviewed by the placing Administrator once each semester, if requested by the parent or guardian of the child or recommended by the person conducting the Special Education program. A summary of the results shall be submitted to the person making such a request or recommendation for review.

6.02 The special education placement of each child shall be reviewed as necessary, but at least once each school year.

6.03 Continuation of or a change in the special education placement of a child pursuant to a formal review of that placement shall be with the consent of the parents (ARS 15-1014). Each district shall establish procedures for communicating the results of a placement review to the parents and for obtaining their authorization for the continuation of placement or the proposed changes of placement.

6.04 Special education programs and services for the student may be terminated by the school district but only after a complete review of the child's educational status determines that termination of such programs and services are in the best interests of the child.

VII. DUE PROCESS

7.01 Due process, a guarantee provided by the Fourteenth Amendment to the U. S. Constitution, is defined as a formal, adversarial proceeding which is convened at the request of a parent, guardian, or surrogate of a handicapped child. The proceedings are presided over and decided by an impartial hearing officer.

7.02 The purpose of the impartial due process hearing is to resolve those differences involving the education of the handicapped child, when those differences cannot be resolved by means of a less formal procedure.

7.03 Each district shall establish policies and procedures (which shall be submitted to the Division of Special Education and filed with the district's special education plan) concerning:

a. Impartial due process hearings.

b. Confidentiality and access to Student Records (e.g., removal of evidence when child has been misclassified or misplaced).

c. Requests for appointment of surrogate parent.

7.04 The term "impartial hearing officer" means a person or tribunal of persons assigned to preside at a due process hearing and whose duty it is to assure that proper procedures are followed and that rights of the parties are protected. In all cases any action taken must comply with current Arizona Revised Statutes 15-1013 and 15-1014. Federal Court Decisions (Guadalupe Decision), and A.C.R.R. R7-2-203. An impartial hearing officer shall be:

a. Unbiased - not prejudiced for or against any party in the hearing.

b. Disinterested - not having any personal interest in the outcome.

c. Independent - may not be an officer, employee, or agent of the local education agency.

7.05 The term "days" means calendar days.

7.06 The "Placement Plan" means that program by which decisions concerning the educational placement of the child in a special education environment are formulated.

7.07 The term "parent" means parent, guardian, or surrogate.

7.08 If a parent refuses to accept the education placement plan proposed by the local education agency, then the matter is closed (Guadalupe Decision). However, should the parent feel that the evaluation procedure leading to it was not accomplished in a manner most beneficial to the child's educational well being, the parent may, within 21 days, initiate a written request for an appeal to the local education agency. This appeal will constitute a request for an impartial due process hearing. Once this request is initiated, there shall be no change in the educational placement until the hearing officer renders his decision.

NOTE: Only the parent may initiate a request for a due process hearing.

7.09 Prior to the actual hearing, notification to the parent will be in compliance with ARS 41-1009B.

NOTE: All written correspondence shall be provided in English and the primary language of the home.

7.10 The impartial due process hearing shall be conducted in accordance with the following procedures:

a. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all parties involved have an opportunity to present their evidence and confront and cross-examine witnesses. The parents shall have the right to produce outside expert witnesses and be represented by legal counsel and by individuals with special knowledge or training with respect to problems of handicapped children. In cases where there are language differences, an interpreter shall be provided.

b. The hearing officer shall review all relevant facts concerning the education placement. This shall include any independent evaluation by an appropriate professional secured by the parent.

i) The hearing officer shall determine, subject to appeal by judicial review, that the local education agency has met all procedural aspects of the education placement plan.

ii) The hearing officer shall render a decision, subject to judicial review, which is binding on all parties, except that in all cases any action taken must comply with current Arizona Revised Statutes, Federal Court Decisions (Guadalupe Decision), and A.C.R.R. R7-2-203 as to whether or not:

The evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree.

The diagnostic profile of the child on which the placement decision was based is substantially verified.

The child's rights have been fully observed.

The placement of the child in the special education program is with the written consent of the parent or surrogate.

Decisions are subject to judicial review.

iii) If the parent's primary language is other than English, then the hearing officer shall appoint an interpreter.

7.11 A copy of the hearing officer's decision shall be delivered to the local education agency and parent, guardian, or surrogate within 10 days following completion of the hearing.

7.12 A written or electronic verbatim record of the impartial due process hearing shall be provided and on file in the district office of the local education agency and made available for review to the parents, guardian, or surrogate upon the request of any of the involved parties.

7.13 All written correspondence, including the copy of the decision specified in Item 7.11, shall be provided in English and the primary language of the home.

7.14 The decision of the hearing officer shall be binding on the parents, guardians, or surrogate, and on the local school district, its employees and agents, subject only to administrative or judicial review.

If the case is appealed, the decision of the hearing officer shall be adhered to, unless a specific waiver is authorized by the hearing officer.

7.15 The final administrative hearing appeal is through the Division of Special Education, State Department of Education, which shall establish policies and procedures for due process hearings.

a. Such an appeal shall be accepted only if it is initiated within 10 days after the decision of the hearing officer has been received by the parties.

b. An appeal of a decision of an impartial hearing officer shall be limited to a determination of (1) whether all procedural requirements have been observed, and (2) whether the decision of the hearing officer is arbitrary or unreasonable in light of the evidence of record.

c. The process as defined in items 7.10 through 7.14 above shall be implemented in response to the administrative hearing appeal to the Division of Special Education.

d. The decision of the Division of Special Education regarding the appeal shall be sent to all parties, including the hearing officer, by registered mail within 30 days of the receipt of the appeal request.

e. The decision of the Division of Special Education shall be binding on the parents and on the school district, subject only to judicial review through established legal procedures. (ARS SS 12-901 et seq)

VIII. WORK-EXPERIENCE PROGRAM

8.01 Each student enrolled in a special education work-experience program shall have been declared eligible for special education services and shall be at least 16 years of age. (ARS 15-1015)

8.02 At the time of his/her placement in a special education work-experience program, the student shall be given a vocational evaluation which specifically assesses his/her aptitudes, interests, and special needs in relation to job placement.

8.03 As a result of the vocational evaluation, a vocational plan shall be developed. This plan shall describe the goals of the work-experience program, including the provision of an adjusted educational curriculum and supervised job placement in relation to the abilities and needs of the individual student.

8.04 If employment is not available or is terminated, the handicapped student shall be provided with a full-time instructional program.

IX. STANDARDS FOR APPROVAL OF SPECIAL EDUCATION PROGRAMS IN PRIVATE SCHOOLS, AGENCIES, OR INSTITUTIONS

A local school district is authorized by the Arizona Revised Statutes (Section 15-1015.E) to:

> *"contract with, and make payments to, other public or private schools, institutions, and agencies approved by the Division of Special Education, within or without the district, for the education of and provision of services to exceptional children......"*

No child may be placed by the local school district in a private school special education program unless the facility has been approved as meeting these standards for the current school year.

To be approved by the Division of Special Education, the private facility must:

9.01 Provide special education instructional programs for handicapped children, as defined in ARS 15-1011, which are at least comparable to those provided by the public schools of Arizona.

9.02 Provide an instructional program description to include:

- a. Goals and objectives for each program.
- b. Number, ages, and categories of children to be served.
- c. Grouping plan to be used (e.g., by exceptionality, age, etc.).
- d. Procedure for maintaining, evaluating, and recording pupil progress.
- e. Teacher responsibilities and time percentages.
- f. Equipment, materials, or special techniques to be used.

9.03 Provide special education teachers certificated in the areas of exceptionality for which programs are provided.

9.04 Provide professional ancillary services appropriate to the needs of the children to be served by the facility.

9.05 Provide administration personnel (e.g., head teacher, principal, or other administrator) certificated in an administrative area or experienced and certified in the appropriate area of special education.

9.06 Utilize facilities which are at least comparable to those used by the public schools of Arizona.

9.07 Maintain student records in accordance with the requirements of ARS 15-151 through 15-154 and the General Education Provisions Act, Section 438.

9.08 Accept all responsibilities to the handicapped child and his parents or guardians which are required of the public schools of Arizona.

9.09 Maintain adequate liability insurance.

9.10 Maintain an accounting system and budget which includes the costs of operation, maintenance, transportation, and capital outlay, and which is open to review upon request.

9.11 Maintain an attendance reporting system which provides local school districts and the Division of Special Education with the information they each require.

9.12 Provide notification to contracting school districts and the Division of Special Education of any changes in staff or deletion of programs within 10 days of the change or deletion.

9.13 Permit on-site evaluation of the program by the Division of Special Education or its designees, and the representatives of the local school districts.

9.14 Request approval from the Division of Special Education in accordance with the prescribed procedures.

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Programming

Programming consists of developing individual educational plans based on a child's determined needs. The specification of the appropriate services to be provided and objectives to be achieved are part of programming.

Instructional Services include the full variety of instructional arrangements for handicapped children. These instructional arrangements are based on services, rather than on handicaps; they focus on needs, rather than disabilities. Every handicapped child should be provided the service or services appropriate to his or her individual needs. A child may receive more than one instructional service at a time.

Itinerant Instruction

Itinerant instruction is provided by an educational specialist who serves handicapped children and their teachers in, generally, more than one school. Speech therapists, instructors specializing in visual or hearing handicaps and resource consultants may be involved in providing a range of services for handicapped children and their teachers in both regular and special classes. Such services include: direct instruction, assistance in the development, implementation, and review of individual educational programs; and participation in the appraisal process.

Resource Room

Resource room services are provided by a resource teacher who works with handicapped students assigned to the regular classroom. The resource teacher normally provides instruction for short periods during the school day for the handicapped student; resource teachers also work with the student's teachers to assist in developing and implementing an individualized educational program for the student.

Special Class

Handicapped students assigned to a special class spend, generally, at least half of the school day in the class. The remainder of the day they may attend regular classes to receive instruction or participate in activities along with non-handicapped students. The special class teacher works with other teachers to assist in the planning and implementation of programs for the handicapped students during the time that they are not in the special class.

Homebound and Hospital Instruction

These services are provided by an appropriately trained teacher to meet the needs of those handicapped students who are unable to attend school due to health reasons.

Other Agencies

Handicapped children may be provided educational or clinical services from other public and private agencies when services appropriate to meet their educational needs are not available in the public school setting. Such agencies may include Arkansas Children's Colonies, Community Day Service Centers, Community Mental Health Centers and Clinics, Arkansas School for the Deaf, Arkansas School for the Blind, and private schools. Educational services provided by other agencies are to meet standards established by the Department of Education.

Support Services are additional corrective and supportive services needed to supplement appraisal and instructional services in order to assist handicapped students in taking advantage of or responding to educational programs and opportunities. Such support services may include the provision of personnel to function as educational aides, and specialized materials and equipment for handicapped students over and above those provided as part of instructional services. Support services may also include specialized transportation, counseling and therapy necessary for a child's adequate functioning, inservice training for all personnel involved with handicapped students, and curriculum development. Support services may be provided in conjunction with appraisal and instructional services, if appropriate.

Administrative Services provide specialized supervisory and administrative support to the special education program. Such services are in addition to the administrative services provided through regular education.

III. Special Education Procedures

Appraisal and Programming

The following procedures describe the process of locating, evaluating and programming to meet the needs of children with handicapping conditions.

In order to find and serve all children who may be eligible for services under Act 102:

> The Department of Education and school districts, in coordination with other state and community agencies, organizations and individuals, engage in periodic, concentrated efforts to locate all school age children not enrolled in public schools or state approved treatment institutions, with a special emphasis on locating children who may be handicapped.
>
> School districts enter into on-going, cooperative arrangements with state and community agencies, organizations and individuals to the extent necessary to locate all school age children residing in the district who are not enrolled in public schools or state approved treatment institutions, with a special emphasis on locating children who may be handicapped.
>
> Parents of children so found are advised as to the necessity of school enrollment for provision of services under Act 102, and are assisted in enrolling such children by designated school or district personnel.

Such child-find efforts have the capability to account for children below school age who have suspected or confirmed handicapping conditions, and parents of children so found are advised of available services.

Schools engage in efforts to ensure that unidentified handicapped children in public schools are located and referred, and that unserved or inappropriately served identified handicapped children in public schools are located, so that any necessary evaluations can be conducted and appropriate services provided.

Cooperative efforts by school districts and other agencies serving handicapped children are undertaken in order to locate inappropriately served identified handicapped children in non-public schools, so that necessary evaluations can be conducted and appropriate services provided.

When a child experiences problems which significantly interfere with learning or which suggest that the child may benefit from special education services:

Referral of a child with a suspected handicapping condition is made to the principal of the school in which the child is enrolled. Referral may be made by the child's teacher, other school or district educational personnel, the child's parent, or other professional with relevant knowledge about the child.

Referral is made using state developed forms and local district forms, if appropriate, and includes such information as exists pertaining to reasons for referral. Information should include descriptions of child behavior and performance, existing medical, social or other educational data as available. In the case of out-of-school children who are being referred, one or more professionals designated by the school or district should visit with the child and parents in order to obtain referral data.

Behavior checklists or other pre-screening devices should be administered to the child by the teacher, other professional personnel and/or parent in order to assist in making a knowledgeable referral.

In order to determine the necessity for and type of evaluation of child needs:

After receipt of referral, the principal notifies the child's parents of the referral and requests their presence at a referral conference. Such notification should usually be made within 5 days of receipt of referral, and all attempts made to schedule the conference so that parents may be present.

A referral conference is held and is attended by the school principal or designee, and the referring party. Special education personnel and other professionals with relevant knowledge about the child should also be included, and the child's parents, if feasible. The child may also be included. The purpose of the referral conference is to review all existing information relating to the educational problems of the child and to determine the need for and extent of a comprehensive evaluation.

Decisions relating to requesting a comprehensive evaluation or any components thereof follow guidelines established by the Special Education Section.

One of the following is an outcome of the referral conference:

The child remains in the present classroom setting and it is determined that there is not enough justification for further appraisal due to the minor nature of the child's learning problem, and/or there is a need for further observation in the present classroom setting before a decision regarding a comprehensive evaluation can be reached, and/or with minimal instructional program adjustments and assistance the problems can be substantially alleviated. In this instance, review of the progress of the child should take place by the principal or designee from one to four weeks after the referral conference and a determination made as to whether further appraisal is necessary. If further appraisal is not called for at this time, another review of child progress should take place within six months or prior to the end of the school year, whichever comes first.

The child remains in the present classroom setting and recommended vision, hearing, motor and/or language screening and/or collection of behavioral and other related data are conducted to help determine the nature of the child's learning needs. Adjustments in the child's educational program may also be made. In this instance, a request may be made to obtain necessary screening, screening materials and/or assistance in data collection.

The child remains in the present setting and a recommended comprehensive evaluation is conducted. In this instance, a request for the evaluation is made by the principal or designee. In cases where the present setting constitutes an environment harmful or extremely detrimental to the child or others, the referral conference decision should be that of securing a temporary setting until the evaluation is completed; in such cases, due process procedures are followed.

At least one professional is designated by the principal as responsible for ensuring that the decisions reached as an outcome of the referral conference are carried out. If the referral conference decision is for continued observation, data collection or program adjustment in the present classroom setting, the classroom teacher normally has this responsibility. Such responsibility includes collecting observational data and making adjustments in the child's instructional program. Special education consultive assistance should be made available at this point, as necessary. If the referral conference decision includes vision, hearing, motor, and/or language screening or collection of non-school based data, other professional personnel may be designated by the school or district to take the responsibility of coordinating necessary screening, consulting with service providers, and data collection. If the referral conference decision calls for a comprehensive evaluation, such responsibility should be that of a school counselor, educational or psychological examiner, psychologist, special educator or other professional designated by the school or district. Such responsibility includes coordinating necessary evaluation components, participating in the evaluation as appropriate, compiling evaluation data and calling the evaluation conference.

Notification, in writing, is made to the child's parents of the decision reached regarding the referral and explanation given of reasons leading to the decision. Such notification includes the name(s) of the professional(s) designated responsible for carrying out the referral conference decision. Parent counseling is made available at this time, if necessary. In the event that a comprehensive evaluation is not recommended, parents are advised of their rights under due process procedures to request an evaluation.

For children not recommended for a comprehensive evaluation as a result of the referral conference:

Children with mild handicapping conditions who are determined to be in need of, and able to benefit from special education services as a result of vision, hearing, motor and/or language screening, or who have been determined to require special education services as a result of behavioral observation and data collection are eligible to receive such services in the regular classroom setting. In this instance, eligibility for services and the type of service provided are determined by the professional(s) designated responsible following the referral conference, in cooperation with the principal, other appropriate special education personnel and other professional service providers.

Notification, in writing, is made to the child's parents as to results of screening or observation and of provision of services, following due process procedures. Counseling services and assistance in interpretation of educational decisions or in other matters pertaining to special educational services should be made available to parents.

In order that an adequate assessment be made of the learning needs of a child recommended for evaluation:

The principal request that necessary evaluations be provided. Such request is made using state developed forms and local district forms if appropriate and includes relevant referral data, specifying recommended components of the evaluation.

A comprehensive evaluation is conducted to determine the extent of any handicapping condition which has a bearing on the child's observed learning problems and to specify the services necessary to overcome or alleviate the problems. The evaluation should identify those handicaps which affect the child's ability to learn. The components of a comprehensive evaluation should include all measures necessary for determining, as precisely as possible, the barriers to learning presented by the handicapping condition.

As a minimum, the evaluation consists of measures of academic performance, behavioral observation in the child's normal environment, measures of adaptive behavior, measures of intellectual skills, language assessments, compilation of social history, family and school medical data, compilation of relevant data from other agencies which provide or provided services or evaluations for the child, and other school record data. As determined necessary, the evaluation may also include one or more of the following:

Individual psychological assessment; medical examination; neurological examination; audiological examination; visual examination; comprehensive language examination; assessments of perceptual motor skills. In conducting evaluations, the child's linguistic and cultural background should be taken into account and adaptations or modifications of assessment procedures made as necessary.

Personnel conducting evaluation components meet qualifications adopted by the Department of Education.

Access to relevant child data is granted to those conducting the evaluation and measures are taken to protect the confidentiality of such data.

Upon completion of the specified components of the evaluation, an evaluation conference is held. This conference is normally chaired by the professional designated responsible at the time of the referral conference, and includes some or all of the following, as deemed appropriate: the child's present teacher, personnel who conducted components of the evaluation, and other professional or special education personnel who may be involved in providing services. The child's parents and the child may also be included. The purpose of the evaluation conference is to review evaluation data, specify all needed instructional and support services and make educational programming recommendations for the child based on the evaluation data. Recommendations are made using state developed forms and local district forms, if appropriate, allowing input from each participant, and giving specific direction for planning educational activities.

Decisions reached at the evaluation conference regarding the type of services required and educational programming recommendations follow guidelines established by the Special Education Section. Such guidelines should emphasize the provision of services in the least restrictive setting and in the regular school environment as the most desirable choice. In making the determination as to the appropriate agency to provide educational services to a handicapped child, the school district either directly or through a cooperative arrangement with another district, is the first preference. However, if needed special education services are not available within the school system, or to avoid handicapped children being placed on waiting lists and not receiving services, special education services provided by other agencies are to be utilized.

One of the following is an outcome of the evaluation conference:

Special education services are not determined appropriate to meet the learning needs of the child. In this instance, the child remains in the regular classroom setting; and review of the progress of the child takes place from one to four weeks after the evaluation conference by the professional designated responsible. Educational programming recommendations may be made as appropriate. Another review of child progress should take place within six months or prior to the end of the school year to determine if further appraisal is necessary.

Special education services are determined appropriate to meet the learning needs of the child. In this instance, the child is determined eligible to receive special education services, the type of appropriate services are specified, and specific programming recommendations are made.

Further evaluations are deemed necessary in order to reach a determination as to necessity for and type of services, and to make programming recommendations. In this instance, another evaluation conference is held when further evaluations are completed.

At least one professional is designated as responsible for ensuring that the decisions reached as an outcome of the evaluation conference are carried out. The designation is made by the individual having administrative responsibility for special education in the district. Such professional is usually the one designated responsible at the time of referral; however, the evaluation results may indicate another person more appropriate to the identified needs of the child. Such responsibility includes coordination of further evaluations called for; assistance in informing parents of decisions reached as a result of the evaluation; follow up of the evaluated child; participation in developing individualized educational plans for the child; assisting in the implementation of such plans; providing special education services; and assisting in reviews of child progress, as appropriate.

Notification, in writing, is made to the child's parents of the decision reached regarding the outcome of the evaluation and explanation given of reasons leading to the decision. Such notification includes name(s) of the professional(s) designated responsible for carrying out the evaluation conference decision. Parents are informed of their right to appeal the decision and the due process procedures to do so. At this time, pertinent information regarding special education services, associated medical and social services, parent organizations and parent programs should be provided to the parents, and counseling and other assistance in interpretation of evaluation data or other matters pertaining to the educational status of the child are made available.

When a child is recommended for instructional services from other agencies, such agencies are notified immediately, so that they can advise parents on services and further admittance procedures.

Evaluation procedures should be completed within 45 calendar days of the referral conference.

Children are to be provided with the recommended appropriate special education services as soon as parental notification has been made. In cases where the recommended appropriate services are not immediately available, temporary instructional or support services are provided. Provisions of temporary services should be utilized only until appropriate services are available.

In order to ensure that special educational services are appropriate to the individual child and to the intent of Act 102:

An individualized educational plan is designed for each child receiving special education services. The plan is developed jointly by the professional(s) designated responsible for carrying out the referral or evaluation conference decisions, teacher(s) who will be providing instruction to the child, special education service providers, and other professionals, as appropriate. Such plan is based on the recommendations arising from the evaluation conference.

The individualized educational plan consists of the identification of educational objectives for the child, description of type of services to achieve the objectives, specific educational activities to implement the objectives, and evaluation methods used to measure achievement. The plan is for either the remainder of the term or for the school year, and is updated after each review as necessary. The plan should include both immediate and long range goals to be achieved as a result of the special education services, and should be oriented to helping the child move toward social and economic self sufficiency and independent functioning in a normal environment.

The curriculum for handicapped students should be suitable to their needs, but should include as much of the regular curriculum as appropriate. Modifications in methods of presentation should be made when necessary to assist the handicapped student in learning. Special curricular areas of benefit to the child with a handicapping condition are to be provided.

The handicapped child is to be given the same opportunities to participate in school activities, to make decisions, and to learn in a trial and error fashion as non-handicapped children. This should apply to handicapped children in every instructional setting. Whenever possible, handicapped children should receive instruction with non-handicapped children, and interact with non-handicapped children during academic and non-academic school activities.

Guidelines are to be developed by the Special Education Section to direct the delivery of special education services.

Implementation of Individual Educational Services

The following procedures pertain to the achievement of appropriate implementation of educational services for handicapped children.

In order to ensure proper implementation of the recommended special education services for an individual child:

One or more professionals are designated by the principal as responsible for ensuring that the individualized educational plan is carried out. The teacher who provides the major portion of the child's instruction generally has this responsibility. Such responsibility includes monitoring and on-going evaluation of child progress, participation in reviews of child progress, and participation in parent conferences. Responsibility for coordination of itinerant, support and other services is generally designated to another professional.

All special education services are to be viewed as transitional arrangements, with the goal of changing services to be most appropriate in response to changing child needs. For this reason, continual monitoring of child progress takes place, and reviews of child progress are to be made whenever requested by appropriate professional personnel or the child's parents. The review should include relevant information from all those providing instruction and special education services.

An annual report of each handicapped child's progress is prepared near the end of each school year, with written results submitted to the parents and to the principal for school records. One professional is designated by the principal as responsible for preparing the annual report. The child's individualized educational plan is updated in accordance with results of the report.

A referral conference is held when additions, changes or discontinuance of special education services are indicated as a result of review or other relevant information. For minor changes in service provision, such as a withdrawal or change of itinerant services or the addition of resource room or other support services, eligibility may be determined at the conference. When more substantial changes are indicated, such as transfer of child's instructional setting, a comprehensive evaluation is recommended. Procedures and parent notification in both instances follow those for the referral process. Re-evaluation may be requested whenever reasonable information indicates that a program change may be more beneficial to the child.

Children receiving special education services are automatically referred for consideration for a comprehensive evaluation every other year. This applies to handicapped children receiving services in all settings, including those served by other agencies. Such procedure is a safeguard to assure that any changes in handicapping conditions are recognized so that a more appropriate program can be provided.

Results of reviews and individualized educational plans are part of the child's school record and are available, with assistance in the interpretation of such records, to the parents and the child of 18 and over.

Exhibit 1 provides a summary of the procedures involved in the appraisal and programming of handicapped children and the implementation of the special education services provided them.

In order to facilitate further the implementation of special education services:

Comprehensive support is to be made available to teachers and other personnel working with handicapped children. Such support includes loan of and assistance in the selection, utilization and adaptation of instructional materials and media for the handicapped, and other consultative assistance pertaining to instructional programs for handicapped children and planning of services. Such assistance may include demonstrations of instructional techniques and inservice training. A support center or learning resource center should be made available to provide such assistance.

Consultative support is to be made available to teachers with handicapped children. Whenever possible, the service of a counselor, psychologist, social worker, therapist, or special educator should be available to provide assistance in aspects of the program, help facilitate an understanding of the child's behavior, assist in relating to the child's parents or function in other supportive capacities. The use of paraprofessionals, volunteers, parents, and student tutors is encouraged.

Administrative support for special education is to be clearly established. Support on the part of the school administration is crucial to the success of helping handicapped children function in regular school environments. Such support includes the promotion of attitudes on the part of all school personnel toward the inclusion of handicapped children, procedures to facilitate the interaction of handicapped and nonhandicapped children, processes which permit and stimulate more flexible individualization of instruction for all children, lowering teacher-student ratios for regular classes which have handicapped children in them and other practices to promote an environment beneficial to education for handicapped children. Allowances should be made for time necessary for inservice, referral and evaluation procedures and other consultative conferences regarding handicapped students, and space provided for these activities.

Architectural barriers which restrict the independent functioning of physically handicapped students are to be adjusted and/or removed in public schools. The Department of Education reviews construction and remodeling plans to achieve this purpose.

Because of the critical importance of career and vocational education for children with handicapping conditions:

Career awareness, orientation, and exploration activities should be an interwoven part of the curriculum for handicapped children. Such career education should begin at the primary level.

A thorough evaluation of the needs, capabilities and preferences of the handicapped student relative to vocational preparation is made before the student commences a vocational or pre-vocational education program. An individualized vocational preparation plan should be developed, jointly with the student, as an outcome of this evaluation, and the plan be subject to change, as appropriate. The handicapped student should participate in choosing the vocational preparation and should be assisted in this process.

Handicapped students should participate in prevocational programs and/or vocational preparation programs at a lower age (age 13 to 16), if appropriate to their individual needs.

Guidance and vocational counseling is provided to the handicapped student prior to and during vocational preparation.

One professional is designated by the school or district as responsible to ensure the provision of services relating to the vocational preparation needs of the handicapped student and to coordinate such services provided by other agencies.

Vocational education programs and vocational-technical schools should be adjusted to accommodate students with handicapping conditions, and support provided to accommodate their special needs. Specialized vocational education programs should be developed as necessary to assist handicapped students in learning occupational skills.

Job counseling and placement services should be available for all handicapped students who are participating or have participated in vocational education programs.

Periodic planning sessions are held on a regular basis at the state and local levels in order to coordinate vocational services offered to handicapped students by special education, vocational education, and rehabilitation services.

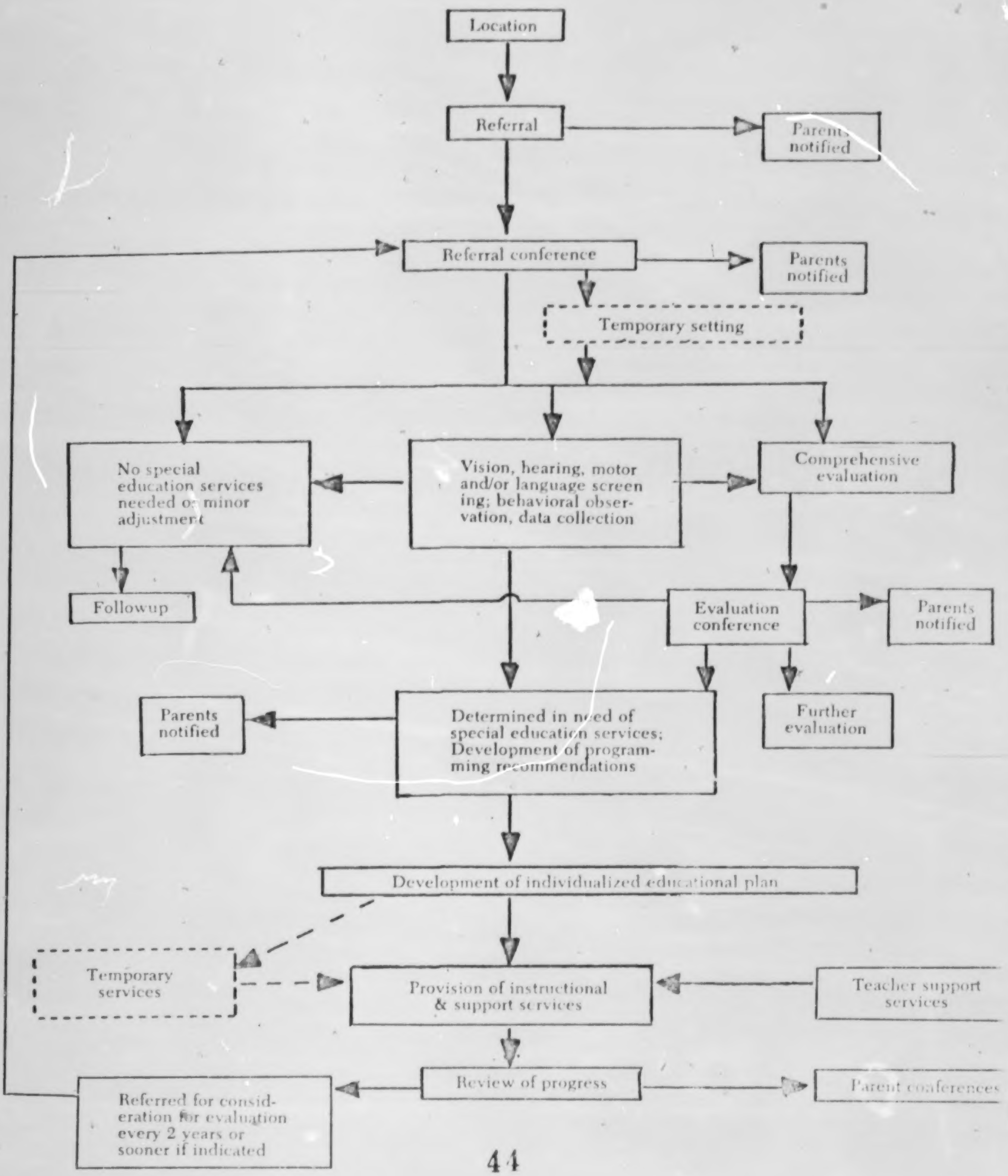
In order to accomplish the expansion and improvement of educational opportunities for handicapped children:

Federal assistance, federally funded projects, and special state project funds may be utilized to initiate, stimulate and provide model program development for the education of handicapped children.

Special education programs and services may be provided for children below school age who have serious handicapping conditions which, if untreated, may become greatly compounded by school age. Programs and services may be made available for young children with severe hearing, visual, or language impairments, physical handicaps, moderate to severe mental retardation, serious emotional disturbance, and severe multiple handicapping conditions. Such programs may begin as early as possible in the life of the child and may include parent education and home programs as an integral part.

Exhibit 1

PROCEDURES FOR APPRAISAL, PROGRAMMING AND IMPLEMENTATION


Location
Referral
Parents notified
Referral conference
Parents notified
Temporary setting
No special education services needed or minor adjustment
Vision, hearing, motor and/or language screening; behavioral observation, data collection
Comprehensive evaluation
Followup
Evaluation conference
Parents notified
Parents notified
Determined in need of special education services; Development of programming recommendations
Further evaluation
Development of individualized educational plan
Temporary services
Provision of instructional & support services
Teacher support services
Review of progress
Parent conferences
Referred for consideration for evaluation every 2 years or sooner if indicated

WILSON RILES
Superintendent of Public Instruction
and Director of Education

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

Special Education Memorandum

PS 75-2
(White)

May 1, 1975

TO: District and County Superintendents of Schools
Administrators of Special Education

FROM: Bert Davis, Consultant Bert Davis
Special Education Support Unit

SUBJECT: CALIFORNIA ADMINISTRATIVE CODE TITLE 5 REGULATIONS PERTAINING TO PRIVATE SCHOOLING FOR THE HANDICAPPED
(Education Code Section 6870-6874.6)

DIVISION 3. HANDICAPPED CHILDREN

Chapter 1. General Provisions and Miscellaneous Provisions

Article 3. Payment of Tuition to Parent

(Education Code Section 6871)

3120. APPLICATION FOR APPROVAL

(a) Original Application. Before the district of residence can accept an application for services under Education Code Sections 6870-6874.6, the pupil must be eligible for services under Education Code Section 6870(a).

(1) Determining Eligibility. If the pupil has never been declared eligible for the special education services authorized by Education Code Section 6870, the parent or guardian may request the school district of residence to determine such eligibility.

(A) The request for determining eligibility shall be submitted on forms provided by the Superintendent of Public Instruction and may be made between the period of September 1 and April 30 of the school year.

(B) The district of residence shall within 45 days of receipt of the request determine the pupil's eligibility and notify the parent or guardian, in writing, and in the primary language of the home, of its findings.

(C) If the district is unable to complete the determination of eligibility before the end of the school year, such determination shall be deferred to the succeeding school year and be concluded prior to October 1 of the following school year.

(2) Application for Services. Within 30 days of receipt of an application, on forms provided by the Superintendent of Public Instruction, for services under the provisions of Education Code Sections 6870-6874.6, the governing board, or its designee, shall approve or deny said application and notify the parent or guardian of the action taken. Such notification shall be in writing and in the primary language of the home. When the governing board elects to provide for the education of an exceptional pupil by paying to the parent or guardian the amount specified in Education Code Section 6871, the governing board shall, on forms supplied by the Superintendent of Public Instruction, apply to the county superintendent for his prior approval.

Appeal

(A) The governing board of the school district, or its designee, shall deny the application if appropriate special education services and facilities are available to the pupil within the school district of residence or within another school district under contractual arrangements, or in a program operated by the county superintendent of schools. If the application is denied, the parent or guardian shall be informed of the reasons in writing, and in the primary language of the home, for such denial and of his right to submit a written appeal of the governing board's decision to the county superintendent of schools. The appeal to county superintendent must be made within 10 days following receipt of the notification of denial by the school district of residence.

(B) Within 30 days of receipt of the approved application submitted by the governing board of the district of residence, the county superintendent of schools shall approve or deny the application and notify the parent or guardian, in writing, and in the primary language of the home, of the action taken.

1. If the parent or guardian has been unable to select a private nonsectarian school which meets the minimum educational standards as prescribed by Section 3122 of this article, the parent or guardian may request the local school district and/or the county superintendent of schools to assist them in this selection.

2. After review and approval, the county superintendent of schools shall forward the application to the State Department of Education. Within 30 days of receipt of the application, the Department shall examine the application for compliance with all applicable laws and regulations and issue an authorization to the local school district permitting the parent or guardian to be reimbursed for services under Education Code Section 6871. The district of residence upon receipt of the authorization shall notify, in writing, and in the primary language of the home, the parent or guardian and the private school of the effective date of approval, the approximate amount of the total tuition reimbursement, and the manner in which the parent or guardian is to be reimbursed.

Appeal

3. If the application is denied by the county superintendent of schools, the parent or guardian shall be informed in writing, and in the primary language of the home, of the reasons and of the right to appeal this decision to the State Department of Education. Such an appeal must be made within 10 days following receipt of the county superintendent of school's decision.

(C) Within 30 days of the receipt of the appeal, the Department of Education shall approve or deny the application. If the appeal is denied, the reasons shall be stated and the parent or guardian shall be informed in writing, and in the primary language of the home, of the action taken. The decision of the Department is final.

(D) At the time of the original application, the district superintendent, or his designee, shall inform the parent or guardian in writing, and in the primary language of the home, of his right to request the pupil's attending physician or the pupil's attending optometrist if the pupil is blind, partially seeing, or educationally handicapped with a visual-perceptual disorder, to recommend private school placement. Upon request of the parent or guardian, the physician-optometrist form shall be completed by the district superintendent, or his designee, and given to the parent or guardian.

(E) Upon receipt of the recommendation by the pupil's attending physician or optometrist, the school district shall inform the parent or guardian of its receipt and within 30 days forward the application to the county superintendent of schools and county health officer with a recommendation for approval or denial. The recommendation of the school district shall be based on the availability of an appropriate public special education placement.

1. Within 30 days of receipt of the application based on the recommendation of the attending physician or optometrist, the county superintendent of schools and the county health officer shall approve or deny the application and notify the parent or guardian of their action. Such notification shall be in writing, and in the primary language of the home. The application, if approved, shall be forwarded to the State Department of Education. If the application is denied, the parent or guardian shall be informed in writing, and in the primary language of the home, of his right to submit a written appeal to the State Department of Education.

Appeal

2. The application shall be approved if either the county health officer or the county superintendent of schools agrees with the recommendation of the pupil's attending physician or optometrist.

Appeal

3. If the parent or guardian so appeals, the Department of Education, within 30 days of receipt of the application, shall approve or deny the request for private school placement according to the procedures established pursuant to this article.

(F) Upon approval of the application by the State Department of Education and provided the pupil is enrolled in the private nonsectarian school with the parent having been notified either orally or in writing of his right to request eligibility for special education services under Section 6870 of the Education Code, reimbursement shall commence on one of the following dates:

1. Up to 30 days prior to the request for the determination of eligibility.

2. Up to 30 days prior to the date of the submission of the application for services under Section 6871 of the Education Code.

3. On or after the date of approval by the State Department of Education.

When an application is based on the recommendation of the pupil's attending physician or optometrist, tuition reimbursement shall commence as provided for in subsection 2 above.

(G) For the purposes of this Article, "appropriate special educational facilities and services" as described in Education Code Section 6870, or as authorized by the duly appointed admission committee, may include those special educational services and facilities recommended by the pupil's attending physician or optometrist.

(b) Approval of Transfer. If, during a school year, the governing board deems it desirable that the pupil transfer to a different public or private nonsectarian school, the governing board shall submit to the county superintendent a request for prior approval of the transfer, specifying the reasons for transfer, the school to which such transfer is contemplated, the amount of tuition that will be charged by the school for the remainder of the period, and such other information as the county superintendent may require.

(c) Change of Pupil's Residence. When a pupil receiving services pursuant to Education Code Section 6871 changes his residence, the following shall occur:

(1) Fourteen days prior to the change of residence, the parent or guardian shall report in writing the date and address of the change of residence to the superintendent, or his designee, of the school district making tuition payments. Noncompliance may be grounds for termination of tuition payments.

(2) If a change of residence constitutes a change of district of residence, the superintendent, or his designee, of the district making tuition payments shall notify, and provide a copy of the pupil's records to, the superintendent of the new district of residence within seven days of the postmark of parental or guardian notification and shall terminate tuition payments on the date of such change of district residence.

(3) The superintendent, or his designee, of the pupil's new district of residence shall commence payment of tuition or place the pupil in appropriate special education facilities and services on the first school day following the date of change of residence.

Appeal

Subsidies App

(4) Refusal to provide placement or payment of tuition by the new school district of residence may be appealed by the parent or guardian to the county superintendent who shall render a decision within seven days after receipt of appeal. The parent or guardian may appeal the decision of the county superintendent to the Department of Education, which shall render its decision within seven days after receipt of the appeal. Tuition payments shall be retroactive to the date of change of residence. State and local support for purposes of tuition payments shall commence upon the date on which continued eligibility is determined or the date of the pupil's change of residence, whichever occurs last.

(d) Renewal of Application.

(1) The Superintendent of Public Instruction, or his designee, shall specify the manner and time of the pupil's renewal for services pursuant to Education Code Sections 6870-6874.6.

✓ (2) If the application for continuation of services is denied by the district of residence or the county superintendent, the parent or guardian shall be informed in writing, and in the primary language of the home, of this action. The parent or guardian may reapply for services by initiating an application as described in Section 3120(a)(2).

✓ (3) If the application for continuation of services is approved by the local school district, the district superintendent shall forward the application to the county superintendent for his prior approval. The county superintendent shall forward the approved application to the Department of Education. After review by the Department of Education, the application, if acceptable, shall be returned to the county superintendent who shall forward it to the district of residence with instructions to notify the parent or guardian and the private school of the effective date of the approval, the approximate amount of the total tuition payment, and the manner by which the parent or guardian will be reimbursed.

✓ (4) Prior to July 30, the school district of residence shall notify the parent or guardian, in writing, and in the primary language of the home, of the status of the renewal of the application. If the school district fails to notify the parent or guardian, the county superintendent shall renew the application for the succeeding school year.

(5) During the third consecutive year of a pupil's enrollment in a private school, the district shall complete a psycho-educational study as prescribed by Section 3121(a). Based on a review of this study, the district shall inform the county superintendent of schools concerning the pupil's continued eligibility for services under Education Code Section 6871. Such a study shall comply with the provisions of Section 3121(a). It shall be the responsibility of the parent or guardian to present the pupil at a mutually agreed upon time and place for the purpose of the study. Following the study, the district shall notify the parent or guardian in writing, and in the primary language of the home, whether the pupil continues to be eligible for services pursuant to Education Code Section 6871. If appropriate public special educational facilities and services are available, the renewal of the application shall be denied.

3121. DETERMINING ELIGIBILITY FOR PAYMENT

(a) Exceptionality of the Pupil. The exceptionality of the pupil and the special educational facilities and services for which he may be eligible shall be determined by an appropriate admission committee convened by the school district of residence. In the event that an admission committee does not exist in or cannot be convened by the district of residence, an admission committee shall be convened by the county superintendent of schools. An admission committee shall be composed of an administrator in charge of special education programs in the school district or county or administrator designated by the school district or county superintendent; an experienced special education teacher; a school nurse; and a school psychologist who has examined the pupil under consideration for eligibility and placement. The admission committee shall use such medical reports as are needed to properly evaluate the pupil. The admission committee shall have the services or presence of other pupil personnel workers, educational specialists, school nurses, social workers, or physicians as the committee may require and request. Whenever an admission committee shall be convened for the purpose of determining eligibility or placement, pursuant to Section 6870 of the Education Code, the local school district shall afford the parent or guardian or his representative an opportunity to present an oral or written argument justifying private school placement. If the parent or guardian or his representative chooses to submit a written argument, it shall be received by the district no later than five days prior to the scheduled review of the application by the admission committee. So as to allow adequate notice, the district superintendent or his designee shall notify the parent or guardian of the time, date, and place of the scheduled meeting of the admission committee. The notification shall be in writing, in the primary language of the home, and received no later than 10 days prior to the date of the meeting.

(b) Unreasonable Cost. To be considered unreasonable, costs, excluding those reimbursed under state and federal aid, to a district or county superintendent of schools for providing special education facilities and services to an exceptional pupil shall exceed that which is derived by the application of one of the following appropriate formulas:

(1) Elementary District. Multiply the average California Elementary School District general purpose tax rate by the district's assessed valuation per ADA by a factor of 2.

(2) High School District. Multiply the average California High School District general purpose tax rate by the district's assessed valuation per ADA by a factor of 2.

(3) Unified District. Multiply the average California Unified School District general purpose tax rate by the district's assessed valuation per ADA.

For purposes of computation, the average general purpose tax rate shall be that computed by the State Superintendent of Public Instruction from the reported California school district tax rates for the preceding year.

The county superintendent shall submit his findings as to unreasonable cost to the Superintendent of Public Instruction for his prior approval.

(c) Unreasonable Travel Distance. An unreasonable distance for purposes of transporting an exceptional pupil to a public program shall be construed to exist under any one of the following circumstances:

1. The nearest public program is more than 50 miles from the pupil's residence.

2. The one-way travel time to that program is greater than 60 minutes.

3. The county superintendent, the superintendent of the district making application, and the chief county health officer, or their designees, concur that as to a particular pupil a shorter travel distance is unreasonable or a greater travel distance is reasonable.

The county superintendent of schools shall submit his findings as to unreasonable travel distance to the Superintendent of Public Instruction for his prior approval.

(d) Recommendation of Physician or Optometrist. In the event public special educational facilities and services are available to an exceptional pupil as specified in Education Code Section 6870(a) and (b), and the attending physician or the attending optometrist of said pupil recommends that it is in the best interests of the health and welfare of said pupil to be enrolled in a private nonsectarian school, institution, or agency made necessary by the pupil's disabilities and special needs, the local school district shall reconvene the admission committee for the purpose of determining if the available public special education program can be modified or adjusted to meet the special needs of the pupil as recommended by the attending physician or in the case of a blind, partially seeing, or the educationally handicapped pupil with a visual-perceptual disorder, the attending physician or optometrist.

The pupil's attending physician, or optometrist, as authorized by Section 6871 of the Education Code, shall justify in writing private nonsectarian school placement for specific medical or optometric reasons as they relate to the health and welfare needs of the pupil. Upon receipt of the recommendation the school nurse, as a member of the admission committee, shall review the report to determine if the physician or optometrist has complied with the provisions of this section. If not, the school nurse or other member of the admission committee shall confer with the attending physician or optometrist. Such conference shall be held prior to the meeting of the admission committee and a summary of the conference shall be presented to the committee as an addendum to the report of the physician or optometrist. If the admission committee determines that it has sufficient medical or optometric information to justify private nonsectarian school placement, the application may be approved by the district or the county superintendent of schools.

In the event the local school district determines the needed special education facilities and services made necessary by the pupil's disabilities, as diagnosed and recommended by the attending physician or optometrist, can be modified or adjusted to serve the best interests of the health and welfare of the pupil, the district shall submit such findings and recommendations to the county superintendent of schools and the county health officer for their review. The recommendation of the attending physician or the attending optometrist shall include a report of the pupil's learning disabilities as diagnosed, a complete description of the specific program and special education facilities needed to ameliorate such disabilities, and the reasons why the available public special education program does not meet the specific needs of said pupil.

In the event the county health officer and county superintendent of schools concur with the findings of the local school district relative to their ability to make the necessary modifications and adjustments as recommended by the pupil's attending physician or optometrist, the county superintendent of schools shall deny private school placement and expedite the necessary changes.

The county superintendent of schools and the county health officer shall afford the parent or guardian or his representative an opportunity to present an oral or written argument justifying private school placement. If the parent or guardian or his representative chooses to submit a written argument, it shall be received by the county superintendent of schools no later than five days prior to the scheduled review of the application. So as to allow adequate notice, the county superintendent of schools shall notify the parent or guardian of the time, date, and place of the scheduled review. The notification shall be in writing, in the primary language of the home, and shall be received no later than 10 days prior to the date of the review.

If the pupil's attending physician recommends 24-hour residential placement for the purpose of providing an environment of ongoing education and specific treatment which necessitates the removal of the pupil from his family, the school district shall forward the recommendation and application to the county health officer and the county superintendent of schools. The county health officer and the county superintendent of schools shall approve or deny the request for residential placement after having conferred with the pupil's attending physician.

If the application is denied by the county health officer and county superintendent of schools, the parent or guardian may, within 10 days following receipt of the decision, submit a written appeal to the Department of Education for its reconsideration. Within 30 days following receipt of the appeal, the Department shall, in writing, and in the primary language of the home, either affirm or reverse the decision of the county health officer and county superintendent of schools, and in the case of a reversal, shall append a statement of reasons and notify the county superintendent, the county health officer, the district of residence, and the parent or guardian of the action taken. The notification to the parent or guardian shall be in the primary language of the home. If the Department reverses the decision of the county health officer and county superintendent of schools, that decision shall be final.

In the event the local school district determines the needed special education facilities and services made necessary by the pupil's disabilities, as diagnosed by the attending physician or optometrist, cannot be modified or adjusted to serve the best interests of the health and welfare of the pupil, the school district shall approve the application for education under Education Code 6871 and submit the application to the county superintendent of schools as specified in Section 3120(a).

The county superintendent of schools shall, on forms provided by the Superintendent of Public Instruction, report his action affirming or denying private nonsectarian school, institution, or agency placement.

Appeal

If the county health officer and county superintendent of schools reverse the school district's decision to approve the application for education under the provisions of Education Code Section 6871, the parent or guardian may submit a written appeal to the Department of Education for its reconsideration. Within 30 days following receipt of the appeal, the Department shall, in writing and in the primary language of the home, either affirm or reverse the decision of the county health officer and county superintendent of schools, and in the case of reversal, shall append a statement of reasons.

In order to provide the parent or guardian free choice of private education and to avoid a conflict of interest on the part of the attending physician or optometrist, the physician or optometrist shall, when asked, recommend two or more private nonsectarian schools, institutions, or agencies offering the special education facilities and services made necessary by the pupil's disabilities.

3122. MINIMUM EDUCATIONAL STANDARDS. A private nonsectarian school, institution, or agency enrolling exceptional children under this article (in this section called "the school") shall meet the following standards:

(a) The school has available for review a written program of instruction, including a curriculum required for the equivalent public school program, and the program conducted conforms to the written program.

(b) Class size does not exceed the maximum authorized for special day classes in the equivalent public school program.

(c) The class is conducted for no less than the minimum day and year as required for the equivalent public school program.

(d) Except as provided in Section 3123, the class is taught by a person appropriately credentialed to teach pupils with the same exceptionality of the pupil for whom tuition is to be paid, and is designed to meet the specific needs of those pupils. Pupils in the class with an exceptionality different from that of such pupil shall not at any time exceed in number 25 percent of the allowable maximum class size.

(e) The school reports monthly to the school district of residence the attendance of each pupil for whom that district pays tuition. No more than 10 days of excused absence per month for illness or quarantine shall be credited unless one of the following occurs:

(1) Home or hospital instruction is provided by an appropriately credentialed teacher as authorized in Section 3122(d).

(2) Following the termination of the regular school year of the pupil's public school of residence, those days not allowable may be credited on the basis of the pupil receiving instruction for a minimum school day for each day not credited because of illness or quarantine.

Such instruction shall be credited on the basis of one hour of home or hospital instruction to be equivalent to one day of attendance. No more than two hours of home or hospital instruction shall be allowable per day and not more than five days of attendance may be credited in any one week.

(f) As requested by the local school district of residence, the school shall render periodic progress reports on each pupil for whom tuition is paid. No less than two such reports shall be rendered each school year.

(g) The school shall submit a certificate of compliance with Title VI of the Civil Rights Act of 1964.

(h) The school shall file with the Superintendent of Public Instruction an affidavit or statement as required by Section 29081 of the Education Code.

3123. APPROVAL OF PRIVATE PROGRAMS CONDUCTED BY NON-CREDENTIALED OR INAPPROPRIATELY CREDENTIALED TEACHERS.

(a) Claims by any school district for reimbursement for special education facilities and services provided in California pursuant to Education Code Section 6871 to exceptional children by noncredentialed or inappropriately credentialed teachers shall be accompanied by the county superintendent's verification that both of the following exist:

(1) That during the period of attendance of such a pupil a shortage of credentialed teachers existed in the area served by the private nonsectarian school as determined by the county superintendent.

(2) That, in the county superintendent's judgment, the needs of the exceptional pupil will be more adequately served in a nonsectarian private school as opposed to the pupil remaining in his existing environment.

(b) Waiver of requirements under subsection (a) shall apply to claims for reimbursement for the current school year.

3124. AFFIDAVIT OF NONSECTARIAN STATUS. The county superintendent of schools shall require from the private school, institution, or agency an affidavit or statement under penalty of perjury attesting to its nonsectarian status. Such affidavit or statement shall be attached to the application for education pursuant to Education Code Sections 6870-6874.6 and this article.

3125. APPEAL PROCEDURES

(a) Appeal. In the event a parent or guardian appeals the decision of the county health officer and county superintendent of schools not to grant an application pursuant to Education Code Section 6871, the State Department of Education shall review the application and the findings of the county superintendent and county health officer concerning the appropriateness of the designated public special education class. The county superintendent shall submit to the Department of Education the following information:

(1) The documentation included as part of the application.

(2) The written report submitted by the parent or guardian or the representative of the parent or guardian justifying the reasons for private school placement.

(3) The findings of the county superintendent and the county health officer as a result of:

(A) Observation of the pupil in a school environment or the reasons why the pupil was not observed.

(B) The on-site observation of the designated public special education class including an interview with the special class teacher.

(C) A summary of the reasons for the denial of services under Education Code Section 6871.

(b) Submission of Later Information. After submission to the State Department of Education of the information required by subsection (a) of this section, no further information will be accepted.

(c) Appeal Review by the State Department of Education. After a review of the information contained in (a) above, the Department shall make a determination based on the information submitted pursuant to subsection (a) of this section or may convene a committee to reexamine the application and the accompanying documentation.

The committee shall be composed of the following members: a Department representative who shall act as chairman; a representative from the office of a county superintendent of schools; a program consultant from the State Department of Education or the office of a county superintendent of schools or a school district; and, a district administrator in charge of special education. The representatives so selected as members of the Appeal Review Committee shall not be employees of the school district or county wherein the application originated.

The committee may take any necessary steps to determine if the available public special education class meets the pupil's health and welfare needs as recommended by the pupil's attending physician or optometrist.

The findings of the committee shall be reported to the State Superintendent of Public Instruction or his designee who in turn shall inform the parent or guardian in writing, in the primary language of the home, and also inform the school district, the county superintendent of schools, and the county health officer of the Department's determination. The Superintendent of Public Instruction or his designee shall also orally inform the parent or guardian of the Department's reasons for approving or denying the appeal.

The action of the Department shall be final and shall occur no later than 30 days following receipt of the appeal submitted by the parent or guardian.

WILSON RILES
Superintendent of Public Instruction
and Director of Education

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

October 1, 1975

MEMO TO: District and County Superintendent of Schools Offices Authorized to Maintain DCH's

FROM: Clyde Chantry, Ph.D., Consultant
Development Centers for the Handicapped
(916) 445-0776

SUBJECT: Administrative Code, Title 5 - Hearing Procedures for Development Centers.

The State Board of Education adopted the attached hearing procedures for development center pupil placement and dismissal on September 11, 1975.

Education agencies maintaining development center programs will be expected to implement the hearing procedures immediately in all matters regarding pupil placement relocation or dismissal.

I suggest that consideration be given to the changes in relation to Admissions Committees and parents rights. If you have any questions or require any help in implementing these regulations, please feel free to contact me. (Clyde Chantry, Consultant, Development Centers for the Handicapped, 721 Capitol Mall, Sixth floor, Sacramento, CA 95814 (916) 445-0776)).

CC:jp
Encl.

(Re: Hearing Procedures for Pupil Placement
in Development Centers for the Handicapped)

ORDER ADOPTING, AMENDING, OR REPEALING REGULATIONS OF STATE BOARD OF EDUCATION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Sections 152, 6880.6, and 6880.7 of the Education Code, and to implement, interpret, or make specific Section 6880.7 of the Education Code, the State Board of Education hereby adopts its regulations in Title 5, California Administrative Code, as follows:

(1) Adopts a new Article 3 (Sections 18130-18139) in Chapter 2 of Division 19 of Part I to read:

Article 3. Hearing Procedures for Pupil Placement in Development Centers for the Handicapped

18130. Who May Request Hearings. The hearing procedures set forth in this article apply to all handicapped pupils described in Chapter 8.7 (commencing with Section 6880) of Division 6 of Part 2 of the California Education Code relating to placement of pupils in Development Centers for the Handicapped.

18131. Procedural Safeguards. The procedures contained herein are to ensure that handicapped pupils and their parents are guaranteed procedural safeguards in hearing and decisions regarding pupil identification, evaluation, and educational placement.

18132. Definitions. For the purpose of this Article, the following definitions mean:

(a) "Pupil" - a pupil as described in Sections 18103(c) and 18103(d) of this title.

(b) "Parent" or "guardian" - includes any person having legal custody of a child including a surrogate or foster parent. "Parent" or "guardian," in addition, includes any adult pupil for whom no guardian has been appointed; and the person having custody of a minor if neither the parent or guardian can be notified of the educational actions under consideration.

(c) School District Governing Board - this term also includes a County Board of Education.

(d) School District - this term also includes an Office of a County Superintendent of Schools.

(e) Notice - a written notice in English and in the primary language of the pupil's home, sent by mail or delivered in person. Notice is deemed to be delivered on the date mailed or when delivery is made in person to the last known address of the recipient. The word "notice" also includes the words "notify," "notified," or "notification."

(f) Days - calendar days.

(g) Hearing Board - a Hearing Board (abbreviated as HB), composed of persons appointed pursuant to Section 18136 who are knowledgeable of the needs of the handicapped pupil, who shall serve as an impartial body in its deliberations. Each member shall be impartial so as to protect the rights of the parties involved and be unbiased, disinterested, and not an employee or agent of the School District Governing Board.

(h) Hearing - personal appearance by interested parties to the proceeding.

(i) Representative(s) of a parent or guardian - a person chosen by a parent or guardian, a legal counsel and/or some other person who may appear on behalf of such parent or guardian.

(j) Admission Committee - a committee established for the purpose of determining eligibility for placement of those handicapped pupils described in Section 18130.

18133. Prior Notice to Parent or Guardian of Meeting by Admission Committee. (a) Whenever an Admission Committee shall meet to consider the eligibility of a pupil for placement, identification, evaluation, referral, or denial of services, the parent or guardian shall be notified by the school district at least fifteen (15) days prior to the meeting by the school district of the date, time, and location of the meeting; the proposed action which the committee will be considering; and the right of the parent or guardian to present relevant information, either oral or written (including medical testimony when an independent evaluation is made by a doctor at the request of a parent or guardian), and to be present or be represented at the meeting. If the primary language of the home is other than English, then the parent or guardian or school district may provide an interpreter.

(b) Within ten (10) days after the Admission Committee meeting, the parent or guardian shall be mailed or served with notice, in a concise statement, of the committee's recommendation to the school district governing board, and the reasons therefor. The notice shall explain the procedures necessary to appeal the committee's recommendation either before the school district governing board or a hearing board appointed by the governing board pursuant to Section 18136.

18134. Notice of Intent to Appeal. The parent or guardian may, within thirty (30) days following the date of notification of the written recommendation by the Admission Committee to the parent or guardian, notify in writing the superintendent of the school district that a hearing is requested. If a parent or guardian submits a request in writing after the thirty (30) day period, the superintendent of the school district may, at his discretion, process the request for a hearing provided the superintendent is satisfied that good cause exists for the delay in submitting the written request for a hearing.

18133. Pupil in Program Pending Appeal. During the pendency of the appeal, unless the school district and the parent or guardian agree otherwise, the pupil shall remain in his or her then current program or, if making application for an initial admission to a public school, shall, with the consent of the parent or guardian, be placed in the program recommended by the Admission Committee. However, if it is determined by the superintendent or the school district that the pupil presents a threat of imminent physical injury to himself or to others, he may be excluded from the program during the pendency of the hearing before the school district governing board, the Hearing Board, or the appeal to the State Superintendent of Public Instruction.

18134. Governing Board or Hearing Board. The appeal may, at the discretion of the school district governing board, be before the school district governing board itself or before a panel known as a Hearing Board. The school district governing board at its next general or special meeting shall make a determination whether to hear the appeal itself, or order the appeal to be heard before a Hearing Board. The parent or guardian shall be notified of the time and place of the next meeting of the school district governing board. The Hearing Board shall be composed of three persons, one selected by the school district governing board, one selected by the parent or guardian, and the third selected by mutual agreement of the two persons selected by the school district governing board and the parent or guardian. If either of the two persons selected by the school district governing board or the parent or guardian for any reason fails to select the third member of the Hearing Board at least fifteen (15) days prior to the date of the hearing before the Hearing Board, such failure shall constitute a waiver of the right to select the third member and the school district governing board shall make an immediate request to the Superintendent of Public Instruction to select the third member of the Hearing Board, who shall be acceptable to both the school district governing board and the parent or guardian. This third member shall not be an employee or agent of the school district which hears the appeal, nor of the State Department of Education. If the person or persons proposed by the State Superintendent of Public Instruction is not acceptable to the school district governing board and the parent or guardian and a hearing board cannot be convened, the hearing shall be before the school district governing board. Each member of the Hearing Board shall have experience in health or educational services to handicapped pupils but not be an employee or agent of the school district. The chairman of the Hearing Board shall be selected by its members.

18137. Hearing. (a) The hearing shall be conducted in an informal manner. Each party, the school district, the parent, guardian, or his representative(s) shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Irrelevant and unduly repetitious evidence may be excluded. The hearing shall be conducted in the English language. However, if the primary language of the home is other than English, then the parent, guardian or school district may provide an interpreter, who shall be first approved by the chairman of the governing board or hearing board conducting the proceeding as being proficient in the English language and the language in which the witness will testify to serve as interpreter during the hearing.

(b) Time for Hearing. A hearing before the governing board shall be held within thirty (30) days following receipt of notification in writing from the parent or guardian of a request for appeal, or within forty-five (45) days if held before a Hearing Board, and shall be held at a reasonable time and place with at least fifteen (15) days' prior notice to the parent or guardian of the date, time, and place of the hearing.

(c) Record of Hearing. A stenographic record shall be kept or a recording made of the proceedings before the governing board or hearing board.

18138. Decision by School District Governing Board or Hearing Board. (a) Within fifteen (15) days after submission to it of all evidence and argument before the governing board or hearing board, the board which holds the hearing shall render a written, reasoned decision, from all of the evidence and testimony presented to it and based upon a majority decision by its members. The school district shall act upon such decision unless the parent or guardian appeals the board's determination to the State Superintendent of Public Instruction as provided in Section 18159.

(b) Notice of Decision. Within ten (10) days the parent or guardian and the school district shall be given written notice of the decision in ordinary and concise language, in the primary language of the pupil's home. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and the reasoning or grounds of such decision. The decision shall become effective within thirty (30) days after it is mailed to the parent or guardian and the school district. The notice of the decision shall state that the parent or guardian has a right of appeal to the Superintendent of Public Instruction and upon request, a free copy of the governing board or the hearing board's proceedings shall be furnished by the school district to the parent or guardian. The school district, upon receipt of the decision by the school district governing board or the hearing board and upon a request for an appeal by the parent or guardian to the State Superintendent of Public Instruction shall provide a copy of the transcript or other record of the hearing to the State Superintendent of Public Instruction.

18139. Appeal to the Superintendent of Public Instruction. The parent or guardian who disagrees with the decision of the school district

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governing board or the hearing board may notify the Superintendent of Public Instruction and request a review of the board's determination within thirty (30) days following the notification of the decision by the school district governing board to the parent or guardian. The Superintendent of Public Instruction, or his designee, shall afford the parent or guardian, and/or representative, an opportunity to present an oral or written argument or both, within thirty (30) days following receipt of the appeal request. Within fifteen (15) days after such argument or appeal has been held, the Superintendent of Public Instruction shall render a written reasoned decision, notify and submit a copy of such decision to the parent or guardian, and/or representative, and the school district of the effective date of the decision, and notify the parent or guardian that he may appeal to a court of competent jurisdiction if he disagrees with such decision. The decision of the Superintendent of Public Instruction shall be the final administrative determination and both parties shall be bound thereby.

This order shall take effect on the thirtieth day after filing with the Secretary of State as provided in Section 11422 of the Government Code.

No obligation is created by these regulations under Section 2231 of the Revenue and Taxation Code for the reimbursement of any local agency for any costs that may be incurred by them resulting from these regulations.

RULES

FOR THE ADMINISTRATION OF THE HANDICAPPED CHILDREN'S EDUCATIONAL ACT

COLORADO DEPARTMENT OF EDUCATION
Calvin M. Frazier, Commissioner

Denver, 1974

7.03(3)(e) A psychologist

7.03(3)(f) A social worker

7.03(3)(g) Other professional personnel who may have additional knowledge of the student's needs

7.03(3)(h) Speech handicapped children shall be staffed by a team consisting of the speech correctionist and at least two or more of the personnel listed in (a) through (g) above.

7.04 Maintenance of Records

7.04(1) A record must be maintained for each child referred for evaluation.

For each child staffed and identified as handicapped and placed in a special education program, the following records shall be maintained when appropriate to the child's condition:

7.04(1)(a) Social development study

7.04(1)(b) Medical history and current health status

7.04(1)(c) Vision and hearing assessment

7.04(1)(d) Academic history and current functioning

7.04(1)(e) Educational assessment

7.04(1)(f) Psychologist's assessment

7.04(1)(g) Annual evaluation of the child's progress

7.04(1)(h) The minutes or written record of the staffing conference(s), showing the date, student, personnel present, basis for determination of handicap, type of handicap and recommended services

7.05 Due Process Procedures

7.05(1) Before any child is given an individually administered battery of psychological tests for placement in a special education program, the child's parent or guardian must give consent in writing.

7.05(2) The committee shall give parents of the allegedly handicapped child an opportunity to consult with the committee or representative thereof prior to determination that their child is handicapped.

7.05(2)(a) Parents are to be informed, in writing, of the established appeal procedures for assessment and placement.

7.05(2)(b) Each administrative unit shall provide parents the right to a consultation with school officials, at which time parents may present their own expert testimony.

7.05(2)(c) Parents may appeal to the local board of education, at which time parents may bring legal counsel and present expert testimony.

7.05(3) In case of appeal, the final approval of the enrollment of any eligible handicapped child in a special educational program shall be made by the board of education of the school district of the child's residence.

7.05(4) The staffing committee shall review the placement of each child who is enrolled in a special educational program at least once every year.

An annual review of the child's placement status shall be made, with a written copy to the parents and a copy on file at the local school system.

CONNECTICUT STATE DEPARTMENT OF EDUCATION
Bureau of Pupil Personnel and Special Educational Services
Hartford, Connecticut

Proposed Procedures for State Board of Education Review of Programs for Children Requiring Special Education, Section 10-76h of the General Statutes

I Definitions

"the parties" The local board of education and the parents, and the child if age 18 or over.

"the local board of education" The board of education for the school district responsible for the education of the child requiring special education.

"the parents" The parent, guardian or surrogate parent of the child.

"review" A review of (1) diagnosis, (2) evaluation of educational programs provided for such child by the board of education of the school district, or (3) the exclusion or exemption from school privileges of such child by the board of education of the school district.

"suitable educational program" An educational program which meets the needs of the child, not the best program which could be devised for the child if greater economic and other resources were available.

"first meeting" The first day of the hearing.

II Notification to Parents by State Board of Education Upon Request For A Hearing

Within seven (7) days of receipt of a request for review, the State Board of Education shall send a notice by registered mail to the parties.

Such notice shall:

a. State that the hearing will be held within thirty (30) days of receipt of the request for review, unless within ten (10) days of the request for review the parents request up to thirty (30) additional days in order to prepare for the hearing;

b. State that the parties will be notified of the exact time and place of the hearing at least fifteen (15) days before the hearing.

c. Inform the parents of the right to be represented at the hearing by legal counsel or other representative of their choice, and of the existence of legal aid or other legal services which may be available for those who cannot afford private counsel.

d. Inform the parents of the right to an independent evaluation of the child at their own expense if they disagree with the evaluation provided by the local board of education.

e. Inform the parents that they and/or their designated representative have the right to examine and copy at the expense of the local board of education, within three (3) days of the board's receipt of written request from the parents, all records pertaining to the child, including any tests or reports upon which the proposed action may be based.

f. Inform the parents of the right to present evidence at the hearing, including expert medical, psychological and educational testimony; and to confront and cross-examine any school official, employee, or agent of the school district who may have evidence upon which the proposed action was based;

g. Inform the parents that where the educational program is challenged, the issue to be determined by the hearing panel is whether the program is suitable, i.e., meets the child's educational needs, not whether it is the best program that could be devised if greater economic or other resources were available; and that pursuant to section 10-76h(e) of the Connecticut General Statutes, the hearing board has authority to confirm, modify, or reject any diagnosis, evaluation, educational program prescribed, or exclusion or exemption from school privileges and to prescribe alternate special educational programs for the child; and

h. Include a listing of the hearing procedures specified in Sections 4 through 17 below.

III State Board of Education to Establish a Hearing Board

Within thirty (30) days of receipt of a request for review, the State Board of Education pursuant to Section 10-76h shall establish a hearing board and hold a hearing, unless within ten (10) days of the request for review the parents request up to thirty (30) additional days in order to prepare for the hearing.

The hearing shall be at a place reasonably convenient to the parties.

The hearing shall be a closed hearing.

The parents shall have the right to a representative of their own choosing, including legal counsel.

The parents and/or their designated representative shall have the right to examine and copy at the expense of the local board of education, within three (3) days of the board's receipt of written request from the parents, all records pertaining to the child, including any tests or reports upon which the proposed action may be based.

The local board of education shall bear the burden of proof as to all facts and as to the appropriateness of the (a) diagnosis, (b) evaluation of special educational programs provided for such child, or (c) the exclusion or exemption from school privileges of such child.

The parents shall have the right to have the attendance of any official, employee or agent of the public school system who may have evidence upon which the proposed action may be based; and to confront and cross-examine any witness testifying for the local board of education.

The parties shall have the right to present evidence and testimony, including expert medical, psychological or educational testimony.

A record of the hearing shall be made and, upon request by either party, a transcript of the hearing shall be made available to the parties.

IV Requests Made By State Hearing Board

The hearing board may require a complete and independent diagnosis, evaluation, and prescription of educational programs by qualified persons, the cost of which shall be paid by the local board of education.

The hearing board may require an independent diagnosis, evaluation, and prescription prior to the hearing, the cost of which shall be paid by the local board of education. In such case the hearing shall be held no later than ninety (90) days after the request for review.

If the hearing board orders an independent diagnosis, evaluation or prescription after the close of the hearing, a copy of the report shall be sent to the parties. Within five (5) days of receiving the report, either party may submit written materials regarding the report, or request that the hearing be reopened to permit evidence regarding the report. Within ten (10) days of such request, the hearing board shall reopen the hearing for the sole purpose of receiving evidence regarding the report.

In cases where the educational program has been challenged, the hearing board shall determine whether that program is suitable to the child's needs, and, if not, whether the local board of education can provide a suitable program.

V Rendering a Decision By State Hearing Board

The hearing board shall render a decision in writing within sixty (60) days of its first meeting, except that in any case in which the hearing board requires a complete and independent diagnosis and evaluation the hearing board shall render its decision within thirty (30) days of completion of such diagnosis and evaluation, but, in any event, within one hundred twenty (120) days of its first meeting. Such decision shall be based solely upon the evidence presented at the hearing, shall include findings of fact and conclusions of law, and copies of the decision shall be sent by registered mail to the parties. The parties shall also be notified of their right to appeal the decision within thirty (30) days to the court of common pleas pursuant to section 10-76h(e) of the Connecticut General Statutes.

Pending the hearing board's decision, the child shall remain in the educational program provided by the local board of education prior to the time of the request for review. Parents who unilaterally take their child out of the public school and place the child in a private school do not lose any rights to a review of the public school program by such action, but they assume the risk that the hearing board will not require the local board of education to bear the costs of such private placement.

CONNECTICUT STATE DEPARTMENT OF EDUCATION
Bureau of Pupil Personnel and Special Educational Services
Hartford

APPENDIX 1

LAWS CONCERNING CHILDREN REQUIRING SPECIAL EDUCATION
Sec. 10-76 of the General Statutes, 1967, as amended, July 1, 1973

Sec. 10-76a. Definitions. Whenever used in sections 10-76a to 10-76j, inclusive, and 10-94a: (a) "Secretary" means the secretary of the state board of education. (b) "Child" means any person under twenty-one years of age. (c) An "exceptional child" means a child who deviates either intellectually, physically, socially or emotionally so markedly from normally expected growth and development patterns that he is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services. (d) "Special education" means special classes, programs or services designed to meet the educational needs of exceptional children in accordance with the regulations of the secretary, subject to approval by the state board of education. (e) "Children requiring special education" includes any exceptional child who (1) is mentally retarded, physically handicapped, socially and emotionally maladjusted, neurologically impaired, or suffering an identifiable learning disability which impedes his rate of development, may be improved by special education, or (2) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in regular school programs but which may be provided through special education as part of the public school program. (f) A "mentally retarded child" means one who by reason of retarded mental development, is not capable of profiting from the educational programs of the public schools established for the normal child, but shall not include any child who requires custodial care, or does not have clean bodily habits, responsiveness to directions or means of intelligible communications; an "educable" mentally retarded child means one who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from a child of twelve years of age but who can be expected to attain a level of intellectual functioning greater than that of a seven-year old child; a "trainable" mentally retarded child means one who, at maturity, cannot be expected to attain an intellectual functioning greater than that commonly expected of a seven-year-old child and who, for entrance into a public school special program, can walk, has clean bodily habits and is responsive to simple direction. (g) A "physically handicapped child" is one who because of some physical handicap, as defined in regulations of the state board of education, requires special educational programs or services. (h) A "socially and emotionally maladjusted child" or "neurologically impaired child" is one who is incapable of fully profiting from the general educational programs of the public schools becuase of some serious social or emotional handicap or an impairment of the nervous system, respectively, as defined by regulation by the state board of education, but who is expected to profit from special education. (i) "School age children" are those who have attained the age at which the town must commence to provide educational opportunities pursuant to section 10-186. (j) "Learning disabilities", "extraordinary learning ability" and "out-standing creative talent" shall be defined by regulation by the secretary subject to the approval of the state board of education, after consideration by him of the opions of appropriate specialists and of the normal range of ability and rate of progress of children in the Connecticut public schools.

Sec. 10-76. State supervision. Regulations. Coordinating Agency. (a) The state board of education shall provide for the development and supervision of the educational programs and services for children requiring special education and may regulate curriculum, conditions of instruction, physical facilities and equipment, class composition and size, admission of students, and the requirements respecting necessary special services and instruction to be provided by town and regional boards of education. Said board shall supervise the educational aspects of the training of all children requiring special education who are residing in or attending any child-caring institution receiving money from the state. (b) The secretary shall designate by regulation subject to the approval of the state board of education, the procedures which shall be used to identify exceptional children. (c) Said board shall be the agency for cooperation and consultation with federal agencies, other state agencies and private bodies on matters of public school education of children requiring special education, provided the full responsibilities for other aspects of the care of such children will be reserved to such other agencies. (d) The state board of education shall periodically evaluate the progress and accomplishments of programs covered by Sections 10-76a and 10-76j, inclusive. Said board shall annually on or before February first review, with the joint standing committee on education of the general assembly, the disbursement of funds, the types of projects funded, and the evaluation of programs dealing with children requiring special education in order to apprise the general assembly of the true condition, progress and needs of special education.

Sec. 10-76c. Receipt and use of money and personal property. The state board of education or any town or regional board of education may receive money, securities or other personal property by gift, divise or bequest to be used for the education of children requiring special education in accordance with the provisions of sections 10-76a to 10-76j, inclusive, or 10-94a and the wishes of the donor.

Sec. 10-76d. Duties and powers of boards of education to provide special education programs and services. (a) In accordance with the regulations and procedures established by the secretary and approved by the state board of education, each town or regional board of education shall provide the professional services requisite to identification of school age children requiring special education, identify each such child within its jurisdiction, determine the eligibility of such children for special education pursuant to sections 10-76a to 10-76j, inclusive, prescribe suitable educational programs for eligible children, maintain a record thereof and make such reports as the secretary may require. Immediately upon the formal identification of any child as a child requiring special education, the responsible town or regional board of education shall inform the parents or guardian of such child of the laws relating to special education. No school age child requiring special education shall be excluded or exempted from school privileges except with the express approval of the secretary based upon appropriate professional advice. Said secretary shall immediately report any child so excluded or exempted to any state agency responsible by law for any aspect of the welfare of such child. (b) In accordance with the regulations of the state board of education, each town and regional school district shall: (1) provide special education for school age children requiring special education who are described in subdivision (1) of sub-section (e) of section 10-76a. The obligation of the school district under this sub-section shall terminate when such child is graduated from high school or reaches age twenty-one, whichever occurs first; (2) provide special education for children requiring special education who are described in subdivision (1) of subsection (e) of section 10-76a and who have not attained school age, but whose educational potential will be irreparably diminished without special education at an early age. The state board of education shall define the criteria by which the town or regional district shall determine whether a given child is eligible for special education pursuant to this subdivision, and such determination shall be made by the district when requested by a parent or guardian, or upon referral by a physician, clinic or social worker, provided the parent or guardian so permits. (c) Each town or regional school district may provide special education for children requiring it who are described by subdivision (2) of subsection (e) of section 10-76a and for other exceptional children for whom provision of special education is not required by law.

(d) To meet its obligations under sections 10-76a to 10-76j, inclusive, any town or regional board of education may, make agreement with another such board or, subject to the consent of the parent or guardian of any child affected thereby, make agreements with any private school or public or private agency or institution to provide the necessary programs or services, but no expenditures made pursuant to a contract with a private school, agency or institution for such special education shall be reimburseable under the provisions of section 10-76g unless the educational needs of the child for whom such special education is being provided cannot be met by public school arrangements in the opinion of the secretary who, before granting approval of said contract for purposes of reimbursement, shall consider such factors as the particular needs of the child, the suitability and efficacy of the program offered by such private school, agency, or institution, and the economic feasibility of comparable alternatives. Any town or regional board of education may enter into a contract with the owners or operators of any sheltered workshop or rehabilitation center for provision of an education occupational training program for children requiring special education who are at least sixteen years of age, provided such workshop or institution shall have been approved by the state board of education. Whenever any child is identified by a town or regional board of education as a child requiring special education and said board of education determines that the requirements for special education could be met by a program provided within the district or by agreement with another board of education except for the child's need for services other than educational services such as medical, psychiatric or institutional care of services, said board may meet its obligation to furnish special education for such child by paying the reasonable cost of special education instruction in a private school, hospital or other institution provided that said board or the secretary concurs that placement in such institution is necessary and proper and no state institution is available to meet his needs.

(e) Any town or regional school district which provides special education pursuant to any mandates in this section shall provide such transportation, tuition, room and board and other items as are necessary to the provision of such special education except for children who are placed in a residential facility because of the need for services other than educational services, in which case the financial responsibility of the school district and reimbursement to such district shall be limited to the reasonable costs of special education instruction as defined in the regulations of the state board of education.

Sec. 10-76e. State grants for cooperative regional special education facilities. Any school district which agrees to provide special education as part of a long-term regional plan approved by the state board of education, for children requiring special education who reside in other school districts, shall be eligible to receive a grant in an amount equal to the net cost to such district of providing, constructing or reconstructing and equipping appropriate facilities to be used exclusively for children requiring special education, provided such facilities shall be approved by the state board of education and shall be an adjunct to or connected with facilities for children in the regular school program, except when the state board of education determines that separate facilities would be of greater benefit to the children, participating in the long-term special education program. Such grants shall be in addition to any grant received pursuant to section 10-286. Application for grants under this section shall be made to the state board of education at such time and in such manner as said board may prescribe. Said board may make such a grant in an amount equal to one hundred per cent of the cost of the facilities less any other public or private grants for such purpose. Upon certification of completion of the building project by the secretary, the comptroller shall pay the sum granted to the town or regional school district in a lump sum.

Sec. 10-76f. Definition of terms used in formula for state aid for special education. For the purposes of sections 10-76a to 10-76j, inclusive: (a) "Per pupil cost" in a school district is the quotient of net current expenses, as defined in section 10-261, minus any state funds received under section 10-266c of the general statutes, as amended, divided by the number of children residing in and being educated at the expense of such district in average daily membership. (b) "Special education personnel" includes any person engaged in special education in accordance with the regulations made pursuant to section 10-76a. (c) "Special education equipment and materials means such equipment and materials as are used primarily to implement special education in accordance with regulations made pursuant to said sections. (d) "Special education tuition" means the tuition, board, room and other fees paid to another public or private school agency or institution by a board of education to meet the educational needs of children requiring special education provided such payments have been pursuant to an agreement approved by the secretary and any payments made by the board of education to supplement the expenditures for special education pursuant to section 10-94a of the general statutes, as amended, which have been approved by the secretary. (e) "Special education transportation costs" are the amount paid by a claimant town or regional board of education for transporting any child to and from any clinic physician's office, agency or institution to which the board requests the child to go for the purposes of determining the need for special education and amounts paid for transporting such child to and from any school, agency or institution for the purposes of special education unless such transportation is on a bus which is transporting, at the same time, children in the standard educational program provided by the claimant board. (f) "Special education rent" means any expenditure for rental of space or equipment to implement special education in accordance with regulations made pursuant to said sections. (g) "Special education consultant services" means non-instructional services rendered concerning children requiring special education by professional persons other than employees of a board of education for programs approved pursuant to said sections. (h) "Net cost of special education" means the result obtained by subtracting from the expenditures made by a claimant board for special education personnel, equipment, materials, tuition, transportation, rent and consultant services, (1) the product of the per pupil cost and the number of school age children residing in and being educated at the expense of such district whose instructional program is provided primarily as determined by the secretary, by special education personnel and (2) the total amount of any funds from other state or federal grants, private grants or special education tuition received by it in such year and used to implement special education programs approved pursuant to said sections.

Sec. 10-76g. State aid for special education. (a) Any school district which provides special education, in accordance with regulations made pursuant to sections 10-76a to 10-76g, inclusive, and 10-94a, for any exceptional child shall be reimbursed in an amount equal to sixty-six and two-thirds percent of its net cost of special education for the preceding fiscal year except as hereinafter provided; provided applications for such reimbursements shall be made not later than October first, and provided all such reimbursements shall be made not later than December fifteenth. In any case in which special education is being provided at a private institution to a child for whom no school district can be found responsible under subsection (b) of Section 10-76d, the reimbursement herein provided for shall be payable to such institution and for such purpose such institution shall be considered a school district within the meaning of Sections 10-76a to 10-76j, inclusive.

Sec. 10-76h. Procedure for review of programs for exceptional children. (a) A parent or guardian of a child requiring special education under sections 10-76a to 10-76j, inclusive, of the 1969 supplement to the general statutes, and section 10-94a of said supplement may request, in writing, of the board of education of the school district responsible for providing such special education, a hearing on and a review of: (a) diagnosis, (b) evaluation of special educational programs provided for such child, or (c) the exclusion or exemption from school privileges of such child. The board of education of the school district shall grant the parent or guardian said hearing and review, in closed session, within ten days after receipt of the written request, and shall cause said hearing and review to be transcribed. A written copy of the decision of the board shall be sent to the parent or the guardian within ten days of the hearing and review, together with a statement of the right of appeal. Any parent or guardian aggrieved by the decision of the board may take an appeal therefrom within thirty days to the state board of education as provided in sections 2 to 5, inclusive, of this act. In the event of an appeal, upon request and at the expense of the board of education of the school district, said board shall supply a copy of the transcript to the parent or guardian and to the state board of education.

ucation of the school district, said board shall supply a copy of the transcript to the parent or guardian and to the state board of education.

(b) A parent or guardian of a child requiring special education under sections 10-76a to 10-76g, inclusive, of the 1969 supplement to the general statutes, and section 10-94a of said supplement, aggrieved by a decision of the board of education of the school district responsible for providing such special education may request, or the board of education of the school district responsible for providing such education may, with due cause, request in writing of the state board of education, a review of: (a) diagnosis, (b) evaluation of educational programs provided for such child by the board of education of the school district, or (c) the exclusion or exemption from school privileges of such child by the board of education of the school district.

(c) The state board of education shall, on receipt of request for such review, establish within thirty days a hearing board of not less than three persons knowledgeable in the fields and areas significant to such educational review of such child. Members of the hearing board may be employees of the state department of education or may be qualified persons from outside said department. No person who participated in the previous diagnosis, evaluation, or prescription of education programs or exclusion or exemption from school privileges under review, nor any member of the board of education of the school district under review, shall be a member of the hearing board. (d) The hearing board shall hear within thirty days testimony of the party requesting said review and any other party directly involved, and shall review the previous diagnosis, evaluation, prescription of special educational services, and other education records of said child, which records shall be furnished by the board of education of the school district, and may hear such additional testimony as the hearing board shall deem relevant. Said hearing board may require a complete and independent diagnosis, evaluation and prescription of educational programs by qualified persons, the cost of which shall be paid by the board of education of the school district. Said hearing board shall cause all formal sessions of the hearing and review to be transcribed. (e) The hearing board shall have the authority to confirm , modify, or reject any diagnosis, evaluation, educational program prescribed or exclusion or exemption from school privileges and prescribe alternate special educational programs for the child, and shall inform the parent or guardian and the board of education of the school district of its decision in writing within sixty days of its first meeting. If the board of education of the school district responsible for providing special education for such child requiring special education does not take action on the findings or prescription of said hearing board within fifteen days after receipt thereof, the state board of education shall take appropriate action to enforce the findings or prescriptions of the hearing board. Appeal from the decision of the hearing board shall be to the court of common pleas in the district of residence of said child within thirty days from the date of receipt of said hearing board's decision. In the event of an appeal, upon request and at the expense of the State Board of Education, said board shall supply a copy of the transcript of the formal sessions of the hearing board to the parent or guardian and to the Board of Education of the school district.

(f) Members of the hearing board, other than those employed by the state of Connecticut, shall be paid reasonable fees and expenses as established by the state board of education.

Sec. 10-76i. An advisory council for special education. (a) There shall be an advisory council for special education which shall advise the state board of education and the secretary thereof, and which shall engage in such other activities as are hereinafter set forth. Said advisory council shall be composed of fifteen members who are not officers or employees of the state board of education, and no more than four of whom may be employees of town or regional school districts. Said advisory council shall be composed of persons broadly representative of community organizations interested in children requiring special education as defined in section 10-76a of the 1971 supplement to the general statutes, parents of such children, practicing members of the professions concerned with the educational needs of such children and members of the general public. The secretary of the state board of education shall appoint the members of said advisory council for three-year terms, except that of those first appointed, five shall be appointed for terms of three years, five for terms of two years and five for terms of one year. Vacancies shall be filled for unexpired terms in the same manner as original appointments. Members of said advisory council shall serve no more than two consecutive three-year terms.

(b) Said advisory council shall elect annually its own chairman and other officers as deemed necessary. The designee of the secretary of the state board of education shall meet with and act as secretary to said advisory council. Members of said advisory council shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the performance of their duties. The state department of education shall provide secretarial and administrative assistance to facilitate the activity of said advisory council. The commission for higher education shall appoint a liaison person to said advisory council.

(c) Said advisory council shall (1) review periodically the regulations, standards and guidelines pertaining to special education and recommend to the state board of education any changes which it finds necessary, (2) comment on any new or revised regulations, standards and guidelines proposed for issuance, and (3) participate with the state board of education in the development of any state plan for provision of special education.

(d) Said advisory council shall review on or before February first annually with the joint standing committee on education of the general assembly the progress made by the state in serving those children requiring special education and any recommendations for the improvement of special education in the state.

Sec. 10-76j. A state plan for special education. (a) The state board of education, utilizing present personnel only, shall make and keep current a five-year plan for the implementation of the special education policy set forth in sections 10-76a to 10-76h, inclusive, and other pertinent sections of the 1971 supplement to the general statutes. The plan shall include: (1) A census of children requiring special education in the state, showing the total number of such children and the geographic distribution of such children as a whole: (2) an inventory of personnel and facilities available to provide instruction and other programs and services to children requiring special education; (3) an analysis of the present distribution of responsibility for special education between the state, including state institutions, and local and regional boards of education, together with recommendations for any changes in the distribution of responsibilities; (4) a formulation of goals, objectives and strategies necessary to achieve compliance with the special education law and to implement the various components of the plan required by this act; (5) a program for the recruitment, preparation and inservice training of professionals and paraprofessionals and supportive personnel in special education and allied fields, including participation by institutions of higher education, state and local agencies, and other appropriate public and private organizations; (6) procedures for identification screening and diagnosis of children requiring special education and determination of the criteria for determining how such children are to be educated; (7) standards for the education in town and regional programs and in state institutions to be received by children requiring special education; (8) a program for the development, acquisition, construction and maintenance of classrooms, resource rooms and other facilities needed to implement fully the provisions of the special education law; (9) a policy on the roles of private schools and regional programs and services for children requiring special education; (10) a delineation of the roles of program personnel and the relationship of special education to the total education program; and (11) an analysis of the present formula and levels and patterns of financial support for special education and recommendations to insure the maximum use of funds to meet the educational needs of children requiring special education.

(b) The development of the state plan shall include the participation of representatives of state agencies and institutions, public and private colleges and universities, professional and parent groups and organizations, local school boards and other local government and civic organizations and the general public.

(c) The complete state plan shall be submitted to the governor and the joint standing committee on education of the general assembly not later than December 1, 1974.

ADMINISTRATIVE MANUAL FOR PROGRAMS FOR EXCEPTIONAL CHILDREN

THE DELAWARE DEPARTMENT OF PUBLIC INSTRUCTION

KENNETH C. MADDEN, State Superintendent

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June, 1974

8.6 Notification to Parents Prior to Evaluation -- When the child's problems indicate the need for a case study evaluation, the parents or guardians shall be notified and given the opportunity for a conference concerning the child's problems prior to the implementation of the evaluation.

8.7 Appropriate Waiting Period to Evaluate -- The case study evaluation shall be completed within a reasonable period of the date of referral generally not to exceed ninety (90) calendar days.

8.8 Assistance to Parents and Exceptional Children in Obtaining Evaluation -- The local school district shall be responsible for assisting the parents in locating and utilizing extended diagnostic processes when these are indicated by the nature of the child's problems. No child shall be prohibited from receiving special education services because he is financially or otherwise unable to obtain the extended diagnostic services.

8.9 Eligibility of Exceptional Children for Unit Funding Purposes -- If it is determined by staff conferences that a child exhibits one or more of the following exceptional characteristics, the child shall be considered eligible to be counted for appropriate section of the unit funding system noted in the Delaware Code, § 1703, Title 14. Informational data from the appropriate specialist(s) noted in parentheses after the characteristics shall be considered by the staff conference. This regulation applies to eligibility criteria for unit funding purposes only. Interpretation of this regulation shall not prohibit or limit services for any child whose needs require services provided by properly qualified personnel hired under a special funding unit.

a) Visual Impairment -- The child's sensory visual impairment is such that he or she cannot develop his educational potential without special services and materials. Admission to a visually impaired unit shall be consistent with statements contained in Section 7.10.

(1) A blind child is one who has a central visual acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees. (Ophthalmologist)

(2) A partially sighted child is one who has a visual acuity between 20/70 and 20/200 in the better eye after all possible medical care and optical aids have been provided, who has serious progressive eye difficulties, or who has a disease of the eye or body that seriously affects vision. (Ophthalmologist)

c. Subtrainable. Maturation and development from 0 to age 5: Gross retardation; minimal capacity for functioning in sensori-motor areas; needs nursing care.
Training and development from 6 to 21: Some motor development present; cannot profit from training in self-help; needs total care. (Psychologist)

h) Multiple Impairment -- The child exhibits two or more impairments severe either in nature or in total impact, which significantly affects his ability to benefit from the educational program.

i) Gifted and Talented -- Eligibility is determined based upon eligibility standards for established programs, standardized tests available in the program area, and staff conferences.

I. PLACEMENT OF EXCEPTIONAL CHILDREN

9.1 Placement -- Placement in a special education instructional program or instructional service shall be determined at a staff conference based on the needs of the individual child.

a) Participants in these conferences shall include appropriate representatives of the resident school, the special education administrator or designee, all those school personnel involved in the evaluation of the child (see Article 8. 9) and those who will be responsible for the provision of the appropriate special education services.

b) The purpose of the conference shall be to:

(1) Develop a profile of the child's learning characteristics, sensory and motor skills and behaviors.

(2) Determine the child's special educational needs.

(3) Determine the extent to which the standard program can meet these needs.

(4) Determine the nature and degree of special education intervention.

(5) Develop an educational plan which indicates specific objectives to be attained by the child.

c) To achieve these purposes the participants in the conferences shall consider all information developed through the case study evaluation. The opinions and concerns of the child's parents shall be presented as a significant part of this information.

d) Final decision or placement shall rest with the special education administrator.

9.2 Staff Conference Log -- A written report of the results and recommendations of the conference shall be kept on file by the local district. This report shall be dated, shall list the names of all those in attendance and shall be signed by the person who has prepared it.

9.3 Explanation of Recommendations to Parents -- The parents or guardians of each child receiving a case study evaluation to determine his need for special education shall be provided with an understandable explanation of the evaluation and of the educational plan drawn to meet his needs.

9.4 Notification of Parents Prior to Initial Placement -- When the educational plan involves an initial placement in a special school, special education instructional program or instructional service, the parents shall receive notification of such determination at a reasonable time but not less than 10 days prior to the proposed placement. Such notification may take place at a conference between the parents and appropriate school personnel or by a letter. Such notification shall offer explanation for the school's placement decision including, but not limited to:

a) The reason for the placement decision.

b) The special education rules and regulations and any local district policies upon which the action is taken.

c) A description of the tests and reports upon which placement is predicated.

d) Plans for implementing the decision.

e) Alternative educational opportunities available to the child, if any.

f) The right to a review of the proposed placement.

9.5 Placement After Notification -- If the parents are advised as stated above, and approve the placement decision by not requesting a revie of same within ten (10) school days, placement shall occur. By mutual agreement between parents and school personnel, placement may be made at any time after notification. Placement may occur at any time if it is in the interest of health or safety of others without affecting the child's rights.

9.6 Request for Review by Parents -- If the parents object to the proposed placement, they may request a review of same prior to the placement or within ten (10) school days after the placement has been made. Thereafter, no review may be requested until sixty (60) calendar days following the placement or until the end of the semester whichever may first occur.

9.7 Stay of Placement After Request for Review -- A request for a review of educational placement shall stay any special educational placement until the review has been completed. If the child has already been placed in a special education program, the parents and school personnel may mutually agree that the placement may stand while the matter is being reviewed.

9.8 Annual Review of Placement by Staff Conference -- The educational status and continued placement of each child in an instructional program or receiving special education supportive services shall be reviewed annually in a staff conference. Utilizing appropriate evaluation information including teacher and parent comments this review shall determine the extent to which the child has met the objectives set for him, recommend further diagnostic evaluation if this is indicated and review the plan as necessary.

9.9 Parental Notification of Ongoing Placement -- Notification of ongoing placement of a child in a special education instructional program or instructional service shall be communicated to the parents at the end of the school year or prior to the beginning of school each year.

9.10 Parental Notification of Major Placement Changes -- Notification of major changes in placement (excluding changes in levels; e.g. primary to intermediate) shall be communicated to the parents in the same manner as original placement. When a major change in placement is proposed, the parents shall have a right to a review of the proposed program.

9.11 Parental Notification upon Termination of Placement -- When the provision of a special education instructional program or instructional service is to be terminated, the parents of the child shall be informed prior to the termination in the same manner as the original placement.

J. REVIEW AND APPEAL PROCEDURES TO PLACEMENT

10.1 Right to Parental Review of Placement -- The right to a review of the educational placement of an individual child shall be available to the parents or guardians of all children who have exceptional needs including children for whom the school has recommended special education placement, children who have been declared ineligible for special education services, children whose needs have been identified outside the educational system and children whose parents believe they require special education services.

10.2 Review Request and Procedure by Parent -- The request for a review of the educational placement of a child shall be made in writing to the superintendent of the school district wherein the child resides.

10.3 Scheduling Review Conference -- The review at the local level shall occur as soon as possible but within 15 calendar days of the request.

10.4 Review Conference Participants -- The review shall be in the form of a conference between the parents, their representatives, the special education administrators, the principal authors of the placement decision and appropriate local district personnel.

a) The superintendent of the child's home district or any designated district administrator other than special education personnel shall act as chairman of the conference.

b) The chairman shall give the parties to the review at least five calendar days' notice of a conference date.

c) The chairman shall keep order, receive documents, and in general conduct an orderly proceeding.

10.5 Purpose of Review Conference -- The review shall seek to establish or refute any or all of the following:

a) That the child has needs which require special education services.

b) That the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree.

c) That the diagnostic profile of the child on which the placement decision was based has been substantially verified.

d) That the proposed placement is directly related to the child's educational needs.

10.6 Right of Parents to Reports and Information -- Prior to the conference, the parents may request a professional of their choice and at their expense (including legal counsel), to meet with the appropriate school personnel to discuss the reasons for the placement. The information on which the placement decision was made shall be made available for examination by the parents or their representatives in accordance with § 4114, Title 14 of the Delaware State Code.

10.7 Records of Review Conference -- A tape recording or other verbatim record of the hearing shall be made. Upon written request of the parent for a state-level review, the transcribed tape or other verbatim report shall be forwarded to the State Superintendent of Public Instruction.

10.8 Placement Data by LEA -- At the conference, representatives of the school shall first present their findings and the reason for the proposed placement. This presentation may include verbal reports, the written record of the staff conference at which the educational plan was developed and any other information deemed relevant. The parent and their representatives may question school personnel about the information which has been presented.

10.9 Placement Data by Parents -- The parents and their representatives may then present appropriate witnesses, reports of tests taken and other facts which they deem relevant. School personnel may subsequently question the information presented by the parents and their representatives.

10.10 Alternatives -- After considering the facts as presented at the conference, the school officials shall recommend to the parents an affirmation of the placement decision, a denial of the decision of placement or alternative procedures to meet the educational needs of the child, which may include further evaluation.

10.11 Notice of Decision by Review Officer -- Such decision shall be communicated to the parents or guardians by certified mail within four calendar days of the completion of the conference. The letter shall include the reasons for the decision.

10.12 Right to Appeal to Superintendent of Public Instruction -- The notice of the decision shall also inform the parents of their rights to an appeal of the placement decision to the Superintendent of Public Instruction. The request for a state-level review must be made in writing to the district superintendent within five school days of the receipt of the local review decision.

10.13 Extension of Time for State-level Review -- By mutual agreement and for good cause, the time to request a state-level review may be extended to thirty (30) calendar days.

10.14 Forwarding Data to State -- After the receipt of a request for a state-level review, the district shall prepare a transcript of the local review to include copies of all documents introduced at the conference. Copies of the transcript shall be mailed to the parents and to the Superintendent of Public Instruction within seven (7) calendar days of the request for review.

10.15 Stay of Placement After Review Request -- A request for a review by the Superintendent of Public Instruction shall stay placement until the review has been determined, unless a) the parents and any special education personnel mutually agree to continue a placement which has already been affected, or b) if the placement is in the interest of the health or safety of others.

10.16 Impartial State-Level Review Officer -- Upon the receipt of the request for a state-level review of a special education placement, the Superintendent of Public Instruction shall designate an impartial reviewing officer who shall be an employee of the Department of Public Instruction.

10.17 Review Procedures -- The reviewing officer shall examine the placement based upon a study of the transcript. He may request further information, either by oral testimony or in writing and whatever technical assistance he deems necessary.

The review by the hearing officer shall be held within ten (10) calendar days of the receipt of the transcript. A report of the review shall be submitted to the Superintendent of Public Instruction, who shall decide the matter within thirty (30) calendar days of the date that the transcript is received. The Superintendent of Public Instruction may dismiss any review he deems lacking in substance.

10.18 Local Education Agency Implementation -- The local school district shall be responsible for implementing the decision of the Superintendent of Public Instruction.

K. EVALUATION OF SPECIAL EDUCATION

11.1 Department of Public Instruction Responsibility for Monitoring -- The extent to which the local school district is fulfilling its responsibilities to exceptional children shall be determined by the Department of Public Instruction. Official representatives of the Department of Public Instruction shall be authorized to examine all documentation.

11.2 Formal Monitoring -- Evaluation by the Department of Public Instruction shall focus on the local district's provision of special education services, community resources utilized by the district, and

a) A Special Education Services Comprehensive Plan. This plan shall describe the district's provision of special education services, its plan for program improvement and those factors unique to the individual district which must be considered in the evaluation. This plan shall be filed with the Department of Public Instruction and revised annually.

b) Continuous Internal Evaluation. The district shall develop in its comprehensive plan procedures which assess the extent to which exceptional children are being adequately served and the effectiveness of each special education program and service.

11.3 Report of Evaluation and Monitoring -- Written reports of the results of the evaluation conducted by the Department of Public Instruction shall be made available to the local education agency.

11.4 Legislative Recommendations -- The State Department of Public Instruction shall recommend to the State Board whatever revisions and/or additions to the Delaware Code, Title 14, which may be required to assure the successful education of the handicapped, as well as such other specific legislative proposals which may be essential in this respect.

IMPLEMENTATION OF THE ORDER AND DECREE IN PETER MILLS et. al. v. BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA

GENERAL STATEMENT

The Court has decreed that no child eligible for a publicly supported education in the District of Columbia Public School shall be excluded from a regular Public School assignment by a rule, policy, or practice of the Board of Education of the District of Columbia unless such child is provided (a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative.

Inherent in the above statement is the procedural and substantive due process which will be spelled out later in this memorandum. Also, it is required not only that the child be initially evaluated and placed, but that reasonable periodic reviews be made of the child's status, progress and the adequacy of any alternative educational program in which he has been placed.

The Court goes on to state that every school age citizen of the District of Columbia must be provided with a free and suitable publicly-supported education regardless of the degree of the child's mental, physical or emotional disability or impairment.

SPECIAL EDUCATION PROGRAMS

The Court has expressly stated that every school age citizen of the District of Columbia must be provided with a publicly-supported educational program suited to his needs. Implied in this statement is the basis for placing students in special classes, hence special education. But the Court has stated that it favors keeping students in regular public school classes with appropriate ancillary services as opposed to placement in a Special School Class.

However, once it has been decided that the educational needs of the child are such that they cannot be met in a regular classroom, there are certain procedures that must be strictly adhered to. These are due process procedures that are constitutionally and statutorily guaranteed the child. Each of these steps/procedures, must be followed because violation of any of them is a violation of the child's rights and a breach of the court orders.

Outlined below are the procedures:

1. Before placing any student in an alternative educational program, the parents or guardian shall be notified of the proposed educational placement, the reasons for the proposed placement, and the right to a hearing by a Hearing Officer if there is an objection to the proposed placement.
2. If it is believed by any member of the District of Columbia Public School System, parents or guardian that a child is in need of a program of special education, that student shall neither be placed in, transferred from or to, nor denied placement in such a program unless his parents or guardians have been notified of such proposed placement, transfer or denial, the reasons therefor, and of the right to a hearing before a Hearing Officer if there is an objection to the placement, transfer or denial of placement.
3. Whenever any action is taken regarding a child's placement, denial of placement, or transfer, the following procedures shall be followed:

A. Notice as described above shall be given in writing by registered mail to the parent or guardian of the child

B. Such notice shall:

1. describe the proposed action in detail;
2. clearly state the specific and complete reasons for the proposed action, including the specification of any tests or reports upon which such action is proposed;
3. describe any alternative educational opportunities available on a permanent or temporary basis;
4. inform the parent or guardian of the right to object to the proposed action at a hearing before a Hearing Officer;
5. inform the parent or guardian that the child is eligible to receive, at no charge, the services of a federally or locally funded diagnostic center for an independent medical, psychological and educational evaluation and shall specify the name, address and telephone number of an appropriate local diagnostic center;
6. inform the parent or guardian of the right to be represented at the hearing by legal counsel; to examine the child's school records before the hearing; including any tests or reports upon which the proposed action may be based, to present evidence, including expert medical, psychological and educational testimony; and to confront

and cross-examine any school official employee, or agent of the school district or public department who may have evidence upon which the proposed action was based.

7. the hearing shall be at a time and place reasonably convenient to such parent or guardian.
8. the hearing shall be scheduled not sooner than twenty (20) days waivable by parent or child, not later than forty-five (45) days after receipt of a request from the parent or guardian.
9. the hearing shall be a closed hearing unless the parent or guardian requests an open hearing.
10. the child shall have the right to a representative of his own choosing, including legal counsel. If a child is unable, through financial inability, to retain counsel, parents or guardian should be advised of the availability of voluntary legal assistance including Neighborhood Legal Services Organizations the Legal Aid Society, the Young Lawyers Section of the D. C. Bar Association, or from some other organization.
11. the decision of the Hearing Officer shall be based solely upon the evidence presented at the hearing
12. the burden of proof shall be borne by the School System its employees and agents as to all facts and as to the appropriateness of any placement, denial of placement or transfer.

13. a tape recording or other record of the hearing shall be made and transcribed and, upon request, made available to the parent or guardian or his representative.

14. at a reasonable time prior to the hearing, the parent or guardian, and his counsel, shall be given access to all public school system and other public school system and other public office records pertaining to the child, including any tests or reports upon which the proposed action may be based.

15. the parent or guardian, or his representative, shall have the right to have the attendance of any official, employee or agent of the public school system or any public employee who may have evidence upon which the proposed action may be based and to confront, and to cross-examine any witness testifying for the public school system.

16. the parent or guardian, or his representative, shall have the right to present evidence and testimony, including expert, medical, psychological or educational testimony.

17. within thirty (30) days after the hearing, the Hearing Officer shall render a decision in writing. Such decision shall include findings of fact and conclusions of law and shall be filed with the Board of Education and the Department of Human Resources and sent by registered mail to the parent or guardian and his counsel.

18. pending a determination by the Hearing Officer, defendants shall take no action concerning the placement, denial of placement, transfer from or to a program of special education, if the child's parent or guardian objects to such action. Such objection must be in writing and postmarked within five (5) days of the date of receipt of notification described above.

DISCIPLINE PROBLEMS

The Court decree expressly prohibits the exclusion, suspension, expulsion, postponement, inter-school transfer, or any other denial of access to regular instruction in the public schools to any child on grounds of discipline for more than two (2) days. Any action on grounds of discipline to extend beyond two (2) days requires notifying the child's parent or guardian of such proposed action the reasons therefor, and of the hearing before a Hearing Officer.

Once it has been decided that an action must be instituted based on grounds of discipline there are certain procedures that must be strictly adhered to. These are due process procedures that are constitutionally and statutorily guaranteed the child. Each of these steps/procedures must be followed, because the violation of any of them is a violation of the child's rights and a breach of the court orders.

Outlined below are the procedures:

1. whenever any disciplinary action is taken against a child extending beyond two (2) days notice shall be given in writing and shall be delivered in person or by registered mail to both the child and his parent or guardian.

2. Such notice shall:

(a) describe the proposed disciplinary action in detail, including the duration thereof;

(b) State specific, clear and full reasons for the proposed action, including the specification of the alleged act upon which the disciplinary action is to be based and the reference to the regulation subsection under which such action is proposed.

(c) During the proposed suspension period, alternative educational opportunities must be made available to the child. Such proposed alternative educational opportunities must be described fully.

(d) inform the child and the parent or guardian of the time and place at which the hearing shall take place;

(e) inform the parent or guardian that if the child is thought by the parent or guardian to require special education services, that such child is eligible to receive, at no charge, the services of a public or private agency for a diagnostic medical, psychological or educational evaluation;

(f) inform the child and his parent or guardian of the right to be represented at the hearing by legal counsel; to examine the childs school records before the hearing, including any tests or reports upon which the proposed action may be based; to present evidence of his own; and to confront and cross-examine any witnesses or any school officials, employees or agent who may have evidence upon which the proposed action may be based.

(3) The hearing shall be at a time and place reasonably convenient to such parent or guardian.

(4) The hearing shall take place within four (4) school days of the date upon which written notice is given, and may be postponed at the request of the child's parent or guardian for no more than five (5) additional school days where necessary for preparation.

(5) The hearing shall be a closed hearing unless the child, his parent or guardian requests an open hearning.

(6) The child is guaranteed the right to a representative of his own choosing, including legal counsel. If a child is unable, through financial inability, to retain counsel, defendants shall advise child's parents or guardians of available voluntary legal assistance including the Neighborhood Legal Services Organization, the Legal Aid Society, the Young Lawyers Section of the D. C. Bar Association, or from some other organization.

(7) The decision of the Hearing Officer shall be based solely upon the evidence presented at the hearing.

(8) The Public School System, its agents or representatives, shall bear the burden of proof as to all factors and as to the appropriateness of any disposition and the alternative educational opportunity to be provided during any suspension.

(9) A tape recording or other record of the hearing shall be made and transcribed and, upon request, made available to the parent or guardian or his representative.

(10) At a reasonable time prior to the hearing, the parent or guardian, or the child's counsel or representative, shall be given access to all records of the public school system and any other public office pertaining to the child, including any tests or reports upon which the proposed action may be based.

(11) The parent or guardian, or the child's counsel or representative, shall have the right to have the attendance of any public employee who may have evidence upon which the proposed action may be based and to confront and to cross-examine any witness testifying for the public school system.

(12) The parent or guardian, or the child's counsel or representative, shall have the right to present evidence and testimony.

(13) Pending the hearing and receipt of notification of the decision, there shall be no change in the child's educational placement unless the principal (responsible to the Superintendent) shall warrant that the continued presence of the child in his current program would endanger the physical well-being of himself or others. In such exceptional cases, the principal shall be responsible for insuring that the child receives some form of educational assistance and/or diagnostic examination during the interim period prior to the hearing.

(14) No finding that disciplinary action is warranted shall be made unless the Hearing Officer first finds, (by clear and convincing evidence,) that the child committed a prohibited act upon which the proposed disciplinary action is based. After this finding has been made, the Hearing Officer shall take such disciplinary action as he shall deem appropriate. This action shall not be more severe than that recommended by the school official initiating the suspension proceedings.

(15) No suspension shall continue for longer than ten (10) school days after the date of the hearing, or until the end of the school year, whichever comes first. In such cases, the principal (responsible to the Superintendent) shall be responsible for insuring that the child receives some form of educational assistance and/or

diagnostic examination during the suspension period.

(16) If the Hearing Officer determines that disciplinary action is not warranted, all school records of the proposed disciplinary action, including those relating to the incidents upon which such proposed action was predicated, shall be destroyed.

(17) If the Hearing Officer determines that disciplinary action is warranted, he shall give written notification of his findings and of the child's right to appeal his decision to the Board of Education, to the child, the parent or guardian, and the counsel or representative of the child, within three (3) days of such determination.

(18) An appeal from the decision of the Hearing Officer shall be heard by the Student Life and Community Involvement Committee of the Board of Education which shall provide the child and his parent or guardian with the opportunity for an oral hearing, at which the child may be represented by legal counsel, to review the findings of the Hearing Officer. At the conclusion of such hearing, the committee shall determine the appropriateness of and may modify such decision. However, in no event may such Committee impose added or more severe restrictions on the child.

14. Whenever the foregoing provisions require notice to a parent or guardian, and the child in question has no parent or duly appointed guardian, notice is to be given to any adult with whom the child is actually living, and to the child himself, and every effort will be made to assure that no child's rights are denied for lack of a parent or duly appointed guardian. Again, provision for such notice to non-readers will be made.

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
Presidential Building
Washington, D. C. 20004

1975 OCT -6 PM 9:46

Superintendent's Circular #11
October 2, 1975

TO ALL SCHOOL OFFICERS:

The D.C. Public School System has established procedures for implementing the requirements of the Mills Decree for special placement services.

The Mills Decree specifically stipulates certain regulations and legal requirements regarding pupil assessment, diagnosis and placement. For example, no adjustment can be made in the length of time required to assess and place a student diagnosed as needing special education. (See Paragraph 5 of the Decree which states: "With regard to children who later come to the attention of any defendant, within twenty (20) days after he becomes known, the evaluation (case study approach) ... shall be completed and within thirty (30) days after completion of the evaluation, placement shall be made so as to provide the child with a publicly supported education suited to his needs.")

Although children can be referred to Pupil Personnel Services from a number of different sources, the following are procedures to be used to refer those who already attend a public school. School staff, parents and persons from public agencies can initiate a referral through the local school principal.

I. Procedures to Refer Children Who Already Attend a Public School

A. Pre-Referral Period: Recognition of Educational Difficulties (Responsibility of the Local School Principal)

Often within the regular educational setting a child apparently exhibits learning difficulties that lead the local school staff to believe that he/she requires special education programming.

Prior to making a referral the local school has the responsibility both to exhaust all possible educational opportunities and to document that appropriate steps have been taken at the building level to solve the problem(s) and indicate that efforts have not worked. Should the school determine that all possible strategies have been exhausted and that the child needs additional services the following steps must be taken:

1. The local school principal or designee (school-based teacher, counselor, assistant principal, etc.) must collect all behavioral information about the performance of the child,

2. The local school principal or designee must document all attempts to provide an adequate educational program for the child at the building and regional level.

3. The local school principal or designee must arrange through the school-based teacher for an educational assessment when the child's problem is identified.

4. The local school principal or designee must arrange for a building level case conference both to review the case and to make specific recommendations concerning additional strategies or referral to Pupil Personnel for evaluation.

All referrals sent to Pupil Personnel must be accompanied by the following:

a. Request for a confidential study (Form 205), including parents' permission to evaluate the child;

b. Documentation of educational strategies tried at the local school level;

c. Educational assessment;

d. Information concerning the building level conference (Name of Child, Date, Time, Attendance, Results).

B. Referral Period: Evaluation and Diagnosis (20 Working Days) Responsibility of Pupil Personnel Services

1. Documentation of need as explained on Form 205 Confidential Request for Individual Pupil Study.

Processing of Form 205 should follow these steps:

a. Form reviewed and signed by school principal;

b. Form and required information are submitted to the Pupil Personnel center director for review of completeness. *

2. Accepted referrals are assigned to Pupil Personnel workers by the center director for appropriate assessment.

3. Completed confidential reports and other required assessment data are reviewed, approved and signed not only by the Pupil Personnel center director, but also the regional superintendent.

4. A copy of the referral form (205) and a copy of the confidential report must be sent to Central Files, Division of Pupil Personnel Services.

5. The confidential report and other required assessment data, including documentation of appropriate steps taken at the local school/regional level, are given to the placement specialist for review. Immediately after review, the case is either accepted for placement or returned to the region as inappropriate for Special Education with indication why it was not appropriate. Unless additional assessment information is required by the placement specialist, this represents the beginning of phase three, The Placement Process.

C. Placement Period: Placement in a Suitable Educational Program (30 Working Days) Responsibility of the Division of Special Education

1. The placement specialist (1) reviews all available data, (2) observes the child and (3) arranges a conference with the parent. If additional data is needed, requests are made from the appropriate source. Then, a recommendation is made which matches the child's educational needs with available public school special education services.

   In those instances where suitable public school programs are not available, a recommendation is made for placement in an adequate private facility.

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*Referrals to Pupil Personnel not accompanied by required data for evaluation for Special Education will be returned to the building principal with indications of data needed.

2. The parent is notified by certified mail, by the Division of Special Education, of the recommended placement including a description of the program and is advised of his/her due process rights.

3. Placement is made when the parent either indicates agreement over the proposed placement by returning the appropriate form to the Division of Special Education or when the parent does not return the form (which action indicates no disagreement).

4. Parents who indicate disagreement are provided the option to contest the proposed placement at a hearing as described in the Decree, Mills vs. Board of Education.

II. Procedures to Refer Children Who Are Non-Attending a Public School (Children Who Are New Residents, Children of School Age Who Have Never Entered School, Children From Private Schools)

Parents can initiate a referral for a child who is non-attending a D.C. Public School by following these procedures:

1. The child must be enrolled in his/her assigned public school.

2. The parent requests that the principal initiate a referral to Pupil Personnel (Form 205). The parent must submit copies of any evaluation or diagnostic data to the school principal.

3. The school principal or designee secures the parents' permission to evaluate the child.

4. The completed referral (Form 205), including permission to assess the child's needs and evaluation or diagnostic data are submitted to the Pupil Personnel center director.

(Cases are then processed in the normal manner as indicated in No. I.)

Very sincerely yours,

Barbara A. Sizemore
Superintendent of Schools

APPENDIX A

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

AUGUST 1975

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS
AND LOCAL SCHOOL DISTRICT SUPERINTENDENTS

SUBJECT: Identification of Discrimination in the Assignment of Children to Special Education Programs

Title VI of the Civil Rights Act 1964 and the Departmental Regulation (45 CFR Part 80) promulgated thereunder require that there be no discrimination on the basis of race, color, or national origin in the operation of any programs benefiting from Federal financial assistance. Similarly, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities benefiting from Federal financial assistance.

Compliance reviews conducted by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity on the basis of race, color, national origin, or sex in the assignment of children to special education programs.

As used herein, the term "special education programs" refers to any class or instructional program operated by a State or local education agency to meet the needs of children with any mental, physical, or emotional exceptionality including, but not limited to, children who are mentally retarded, gifted and talented, emotionally disturbed or socially maladjusted, hard of hearing, deaf, speech-impaired, visually handicapped, orthopedically handicapped, or to children with other health impairments or specific learning disabilities.

The disproportionate over- or underinclusion of children of any race, color, national origin, or sex in any special program category may indicate possible noncompliance with Title VI or Title IX. In addition, evidence of the utilization of criteria or methods of referral, placement or treatment of students in any special education program which have the effect of subjecting individuals to discrimination because of race, color, national origin, or sex may also constitute noncompliance with Title VI and Title IX.

In developing its standards for Title VI and Title IX compliance in the area of special education, the Office for Civil Rights has carefully reviewed many of the requirements for State plans contained in Section 613 of the Education Amendments of 1974 (P.L. 93-380), which amended Part B of the Education of the Handicapped Act.

Based on the above, any one or more of the following practices may constitute a violation of Title VI or Title IX where there is an adverse impact on children of one or more racial or national origin groups or on children of one sex:

1. Failure to establish and implement uniform nondiscriminatory criteria for the referral of students for possible placement in special education programs.

2. Failure to adopt and implement uniform procedures for insuring that children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement including, but not limited to the following:

   a. prior written and oral notice to parents or guardians in their primary language whenever the local or State education agency proposes to change the educational placement of the child, including a full explanation of the nature and implications of such proposed change;

   b. an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification of the child, and obtain an independent educational evaluation of the child;

   c. procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State, including the assignment of an individual, who is not an employee of the State or local educational agency involved in the education of children, to act as a surrogate for the parents or guardians;

   d. provisions to insure that the decisions rendered in the impartial due process hearing referred to in part (b) above shall be binding on all parties, subject only to appropriate administrative or judicial appeal; and

e. procedures to insure that, to the maximum extent appropriate, exceptional children are educated with children who are not exceptional and that special classes, separate schooling, or other removal of exceptional children from the regular education environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

3. Failure to adopt and implement procedures to insure that test materials and other assessment devices used to identify, classify and place exceptional children are selected and administered in a manner which is non-discriminatory in its impact on children of any race, color, national origin or sex.

   Such testing and evaluation materials and procedures must be equally appropriate for children of all racial and ethnic groups being considered for placement in special education classes. In that regard procedures and tests must be used which measure and evaluate equally well all significant factors related to the learning process, including but not limited to consideration of sensorimotor, physical, socio-cultural and intellectual development, as well as adaptive behavior. Adaptive behavior is the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of her or his age and cultural group. Accordingly, where present testing and evaluation materials and procedures have an adverse impact on members of a particular race, national origin, or sex, additional or substitute materials and procedures which do not have such an adverse impact must be employed before placing such children in a special education program.

4. Failure to assess individually each student's needs and assign her or him to a program designed to meet those individually identified needs.

5. Failure to adopt and implement uniform procedures with respect to the comprehensive reevaluation at least once a year of students participating in special education programs.

6. Failure to take steps to assure that special education programs will be equally effective for children of all cultural and linguistic backgrounds.

School officials should examine current practices in their districts to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately devise and implement a plan of remediation. Such a plan must not only include the redesign of a program or programs to conform to the above outlined practices, but also the provision of necessary reassessment or procedural opportunities for those students currently assigned to special education programs in a way contrary to the practices outlined. All students who have been inappropriately placed in a special education program in violation of Title VI or Title IX requirements must be reassigned to an appropriate program and provided with whatever assistance may be necessary to foster their performance in that program, including assistance to compensate for the detrimental effects of improper placement.

Some of the practices which may constitute a violation of Title VI or Title IX may also violate Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act of 1973 (P.L. 93-516) which prohibits discrimination on the basis of handicap; and other practices not addressed by this memorandum and not currently prohibited by Title VI or Title IX may be prohibited by that Section. The Office for Civil Rights is currently formulating the regulation to implement Section 504.

School districts have a continuing responsibility to abide by this memorandum in order to remain in compliance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Martin Gerry
Acting Director
Office for Civil Rights

1. Statute - 230.23(4)(m) 4 page 33 now in effect
2. Regulation - 6A-6.331 (4) page 57-58 now in effec
3. Guidelines pages 11-14 - no longer in effect - revisec by State Plan-Ad (yellow)

District Procedures for Providing Special Education for Exceptional Students

GUIDELINES - 1975

Volume I

General Guidelines and Appendix

DEPARTMENT OF EDUCATION
Tallahassee, Florida 32304
RALPH D. TURLINGTON, Commissioner

ESE 241
Exp. Date 11/15/75

6A-6.331 Identification and assignment of exceptional students to special programs

Procedures and criteria for diagnosis, evaluation and assignment of exceptional students shall be set forth in the district procedures document for the exceptional student program submitted to the division of elementary and secondary education.

(1) The school board shall be responsible for the medical, physical, psychological, social and educational evaluations of students who are suspected of being exceptional students by competent evaluation specialists. Evaluation specialists shall include, but not be limited to, persons such as physicians, psychologists, audiologists, and social workers with each such person licensed in his professional field as evidenced by a valid license or certificate to practice his profession in Florida. Educational evaluators not covered by a license or certificate to practice a profession in Florida shall either hold a valid Florida teacher's certificate or be employed under the provisions of section 6A-1.502; provided, however, that such individuals shall meet criteria prescribed by the director of the division of elementary and secondary education prior to assigned duties as educational evaluators.

(2) A staffing committee utilizing the process of reviewing diagnostic, evaluation, educational and social data to recommend educational assignment of exceptional students shall recommend students who are eligible for special programs. A staffing committee shall also make recommendations for educational planning, articulation and dismissal as described in guidelines issued by the division of elementary and secondary education. Staffing committees shall include members from such groups as instructional personnel, evaluation specialists, parents and community agencies as may be appropriate to the students being reviewed.

(3) Each district shall designate a staff member as a program coordinator of special programs for exceptional students responsible for the following:

(a) coordinating all district programs for exceptional students;

(b) reviewing the recommendations of the evaluation specialists and the staffing committee;

(c) determining student eligibility for special programs defined in these regulations and in the criteria outlined in the district procedures;

(d) assuring that parents have been appropriately informed of the student's recommended educational placement and of their due process rights;

(e) informing, in writing, the appropriate school principal of the student's eligibility for a special program;

(f) carrying out educational planning, articulation and reassignment of students as described in guidelines issued by the director of the division of elementary and secondary education.

(4) Pursuant to the provisions of section 230.23(4)(m)4., Florida Statutes, each school board shall develop policies providing for review of any assignment, placement or denial of assignment or placement of an exceptional student in a special program. Such policies shall include adequate provision for:

(a) Written notice to the parent or guardian of the proposed assignment, placement or denial of assignment or placement, including:

1. Reasons for which the action is proposed or on which the decision was based, and

2. Procedures to be followed by the parent or guardian in requesting a review conference.

(b) A review of the individual case, if requested, at which time the parent or guardian may present any factual information related to the assignment, placement, or denial of assignment or placement, and may question school personnel regarding the reasons for their action or proposed action.

(c) A decision, in writing, to be provided the parent or guardian within a reasonable period of time following the review conference.

(d) A final review by the school board of any decision contrary to the wishes of the parent or guardian, if so requested.

6A-6.341 Criteria for participation in special program for exceptional students

For a district to utilize the cost factors for special programs for exceptional students to generate funds it shall:

(1) Develop a written statement of procedures for providing an appropriate program of special instruction, facilities and services for exceptional students, as required by section 230.23 (4)(m), Florida Statutes, and submit such statement to the director, division of elementary and secondary education for approval.

(2) Such statement shall be developed in accordance with guidelines issued by the director of the division of elementary and secondary education and shall include, but not be limited to, the following information:

(a) The number of students by exceptionalities within the district.

(b) The criteria and procedures for classification of exceptional students.

(c) The type of organization and operation for the special programs for exceptional students.

(d) The facilities to be used when other than public school centers.

(3) Report to the director, division of elementary and secondary education the total of students in the district receiving instruction in each special program for exceptional students in the manner and on the form prescribed by the department of education.

6A-6.351 Multi-district programs

Special programs for exceptional students established in cooperation with adjoining districts, shall be established and maintained according to guidelines issued by the director of the division of elementary and secondary education.

6A-6.361 Contractual arrangements with non-public schools

Contractual arrangements with non-public schools may be established according to guidelines issued by the director, division of elementary and secondary education, when special programs are not available within the

APPROVED

1

EDUCATION OF THE HANDICAPPED ACT, AS AMENDED BY P.L. 93-380

PART TWO

AMENDMENT TO STATE PLAN
UNDER PUBLIC LAW 93-380

FY 1975

Bureau of Education for Exceptional Students
Division of Public Schools
Florida Department of Education

111

II PROCEDURAL SAFEGUARDS
[EHA-B: 613(a)(13)]

Following are the procedures adopted by this SEA for insuring that handicapped children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children:

A. Due Process Guarantees. The following due process procedures have been adopted by this SEA to comply with Section 613(a)(13) (A) (i)-(iv) of EHA-B, as amended by P.L. 93-380:

Florida Statutes:
230.23 Powers and duties of school board
(4) (m)4. No student shall be given special instruction or services until he is properly classified as an exceptional student. The parent or guardian of an exceptional student placed or denied placement in a program of special education shall be notified promptly of such placement or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to a review of the determination and of the procedures for obtaining such review. (Enacted 1973)

The School Health Services Act passed in 1974 requires parent permission for screening:

> (7) "Exemptions.-At the beginning of each school year, parents or guardians will be requested to provide their written permission for medical or physical examination, screening, and treatment. Any child shall be exempt from medical or physical examination, screening and treatment if his parent or guardian does not provide such permission, provided however, that the laws, rules, and regulations relating to contagious or communicable diseases and sanitary matters shall not be violated."

Florida State Board of Education Regulations
6A-6.331 Identification and assignment of exceptional students to special programs.
(4) Pursuant to the provisions of section 230-23(4)(m)4., Florida Statutes, each school board shall develop policies providing for review of any assignment, placement or denial of assignment or placement of an exceptional student in a special program. Such policies shall include adequate provision for:

(a) Written notice to the parent or guardian of the proposed assignment, placement or denial of assignment or placement, including:

1. Reasons for which the action is proposed or on which the decision was based, and
2. Procedures to be followed by the parent or guardian in requesting a review conference.

(b) A review of the individual case, if requested, at which time the parent or guardian may present any factual information related to the assignment, placement, or denial of assignment or placement, and may question school personnel regarding the reason for their action or proposed action.

(c) A decision, in writing, to be provided the parent or guardian within a reasonable period of time following the review conference.

(d) A final review by the school board of any decision contrary to the wishes of the parent or guardian, if so requested.

J. Due Process Procedures

District personnel should be aware of the legal implications of program decisions and protect the rights of the student and his parents. Although the district school board is responsible for providing appropriate identification and education for each exceptional student and is responsible for placement, parents have the right to due process procedures.

Due process procedures include:

a. right to prior notification
b. right to a formal hearing, if requested
c. right to review all records
d. right to an independent evaluation of student
e. right to counsel
f. right to cross examine witnesses
g. right to bring witnesses
h. right to appeal

Suggested guidelines for providing due process are:

1. The right to review of the identification, evaluation and educational placement of an individual student shall be available to the parents or guardians of all students, including students for whom the school has recommended special education placement, students who have been declared ineligible for special education programs, students whose needs have been identified outside the educational system and students whose parents believe they require special education programs.

Review of Student Records

2. The review of records shall be provided consistent with HEW Regulations implementing the Family Education Rights and Privacy Act of 1974.

Due Process Hearing

3. The request for a review of the educational placement of a student shall be made to the superintendent of the school district wherein the student resides.

4. The review at the local level shall occur as soon as possible but within fifteen (15) calendar days of the request.

5. The review shall be in the form of a conference between the parents, their representatives, the special education administrators, the principal authors of the placement decision, and appropriate local district personnel.

   a. The superintendent of the child's home district, any designated district administrator (other than pupil personnel or special education personnel) or a person, not an officer, employee or agent of the LEA shall be designated to act as chairman of the conference.

b. The chairman shall not be prejudiced for or against any party involved in the hearing or have any personal interest at stake in the outcomes.
c. The chairman shall give the parties in the review at least five (5) calendar days' notice of a conference date.
d. The chairman shall keep order, receive document and, in general, conduct an orderly proceeding.

6. The review shall seek to establish any or all of the following:

a. that the child has needs which require special education;
b. that the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree;
c. that the diagnostic profile of the child on which the placement decision was based is substantially verified.

7. Prior to the conference, the parents shall be notified of their rights to obtain an independent evaluation of the student.

8. A typewritten record of the conference shall be made by a court reporter who shall be paid by the district. In lieu of a court reporter, a tape recorder, followed by a typewritten transcript, may be used. The school district representative and the parents must sign the typewritten transcript.

9. At the conference, representatives of the school shall first present their findings and the reason for the evaluation and proposed placement. This presentation may include verbal reports, the written record of the multidisciplinary staffing at which the educational plan was developed, and any other information deemed relevant. The parents and their representative may question school personnel about the information which has been presented. The rules of evidence shall not apply to the conference.

10. The parents and their representatives may then present appropriate witnesses, reports of tests taken, and other facts which they may deem relevant. School personnel may subsequently question the information presented by the parents and their representatives.

11. After considering the facts as presented at the conference, the conference chairman shall render a decision which shall be binding on all parties subject only to appropriate administrative or judicial appeal.

12. Such decision shall be communicated to the parents or guardians by certified mail within four (4) calendar days of the completion of the conference. The letter shall include the reasons for the decision.

Appeal Procedures

13. The notice of the decision shall also inform the parents of their rights of an appeal and a review of the placement decision by the District School Board. The request for a school board review must be made in writing to the district superintendent within five (5) school days of the receipt of the local review decision.

14. By mutual agreement and for good cause, the time to request a school board level review may be extended to thirty (30) calendar days.

15. After the receipt of a request for a school board review, the district shall prepare a transcript of the local review, to include copies of all documents introduced at the conference. Copies of the transcript shall be mailed to the parents and to the attorney of the School Board within seven (7) calendar days of the request for review.

16. A request for a review by the school board shall stay any special education placement until the review has been determined unless the parents and school personnel mutually agree to continue a placement which has already been effected.

17. Upon the receipt of the request for a school board review, the Chairman of the School Board shall designate an impartial reviewing officer.

18. The reviewing officer shall examine the decision based upon a study of the transcript. He may request further information, either by oral testimony or in writing, and whatever technical assistance he deems necessary.

19. The review by the hearing officer shall be held within ten (10) calendar days of the receipt of the transcript. A report of the review shall decide the matter within thirty (30) calendar days of the date that the transcript is received. The School Board may dismiss any review deemed lacking in substance.

20. The local school district shall be responsible for implementing the decision of the School Board.

Procedures to Protect the Rights of the Child When the Parents or Guardians are not Known

Florida law does not authorize the state education agency or local education agencies to assign individuals to act as surrogates, however, to meet this requirement, cooperative procedures will be implemented through the Department of Health and Rehabilitative Services. This state agency is comprised of the Divisions of Health, Family Services (welfare), Mental Health, Mental Retardation, Corrections and Youth Services. These Divisions already have legal responsibilities for dependent children and children in need of supervision when "the parents or guardians are not known, unavailable, or the child is a ward of the State."

II PROCEDURAL SAFEGUARDS
[EHA-B: 613(a)(13)]

B. Least Restrictive Alternative. Following are the procedures to insure that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the type of supplementary aids and services cannot be achieved satisfactorily:

1. Least Restrictive Alternatives

Florida Statutes
230.23 Powers and duties of school board (4)(m)5

In providing for the education of exceptional students the superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students whenever this is possible. No student shall be segregated and taught apart from normal students until a careful study of the student's case has been made and evidence obtained which indicates that segregation would be for the student's benefit or is necessary because of difficulties involved in teaching the student in a regular class. (Enacted in 1947)

Policy Statement - Distributed by Department of Education
Guidelines - 1975 District Procedures for Providing Special Education for Exceptional Students. Volume I, page four:

A free public education is a right of the exceptional student. He should not be separated from his peer group unnecessarily, as stated in FS 230.23(4)(m)5 - "In providing for the education of exceptional students the superintendent, principals and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students whenever this is possible.

Districts are given great flexibility in designing and implementing programs. There are no statutes or regulations requiring or limiting organization of programs for the various exceptionalities.

The establishment of instructional programs for exceptional students is based upon the recognition that there are wide deviations or differences among students in their physical, mental, emotional and social needs. Subsequently, it follows that the instructional program -- organization of the program, facilities or instructional methods -- must differ to fully meet the educational needs of students who deviate from the average to the extent that they require special education to develop their maximum potentials.

2. Continuum of Programs

Florida State Board of Education Regulations

6A-6.311 Eligible special programs for exceptional students

Special programs for exceptional students encompass instruction and special education services which provide significant adaptations in one or more of the following curriculum, methodology, materials, equipment, or environment designed to meet the individual learning needs of exceptional students:

(1) Special programs may be structured in one or more of the following patterns so that an exceptional student may receive instruction in a:
   (a) basic class with supplementary consultation or special education services;
   (b) basic class supplemented by itinerant instruction or a resource room program;
   (c) special class either full-time or part-time in a regular school;
   (d) special day school;
   (e) non-public residential or day school through a contractual arrangement or other written agreement;
   (f) special class in a hospital or treatment center;
   (g) individual instruction in a hospital or home setting.

(2) Pre-kindergarten programs for exceptional students include:
   (a) special programs for exceptional students ages three (3) and four (4) as listed in (1)(a)-(g) above.
   (b) Home instruction or supplemental instruction for deaf, blind, severely physically handicapped or trainable mentally retarded below age three (3). Supplemental instruction is defined as regularly scheduled instruction to a deaf, blind, severely physically handicapped or trainable mentally retarded student enrolled in public or non-public preschool or day care programs.

(3) When an appropriate special program cannot be provided within the district or in cooperation with other districts, a district may utilize non-public schools through a contractual arrangement based on guidelines issued by the director of the division of elementary and secondary education.

(4) When a district provides a special programs for exceptional students by assigning instructional personnel to a facility operated by another agency or organization, a written agreement shall be developed outlining the respective duties and responsibilities of each party.

Policy Statement

(see statement from Guidelines - 1975 Volume I, page four quoted above)

Florida Division of Elementary and Secondary Education Guidelines

Program alternatives and criteria for their use are further described in State Guidelines: Volume II Development and Evaluation of Instructional Programs for Exceptional Students

Volume II-B Development and Evaluation of Instructional Programs for the Mentally Retarded

Special Education

Regulations and Procedures

Georgia Department of Education

II. PROCEDURAL SAFEGUARDS

Reference: Paragraphs (12) and (13) of Subsection (a) of Section 613,
P. L. 93-380 (Education Amendments of 1974) and
Family Education Rights and Privacy Act of 1974,
Amendment to P. L. 93-380 (Buckley Amendments)

A. General Provisions

1. Communications to Parents

Each school system shall insure that all communications made to parents be in both English and the primary language of the home, if such primary language is other than English. Such communications shall be made, to the extent possible, in simple and commonly understood words.

Where the parents are unable to read in any language, all efforts shall be made to communicate orally.

All possible means of communication may be utilized in securing consent (e.g., oral, regular mail) and only as a last resort will certified mail be used to obtain consent.

2. Testing – Limitations

Each school system shall insure that whenever testing of a child is required or permitted by these regulations, the results of ability, aptitude or achievement tests shall not be used exclusively or principally as the basis for any finding or conclusion.

Individual psychological examinations shall be administered and interpreted only by an approved examiner. (See School Psychology Services Handbook.)

3. Procedures and Forms

All notices to parents required of school systems shall contain information in accordance with federal and state regulations.

4. Rights to be Accompanied

Where a meeting or conference with parents is required or permitted by these regulations, the parents and the school system may choose to be represented or accompanied by a third party.

5. A child (age zero to 21) may be referred for evaluation by any of the following.

   a. A school official, including, without limitations, a teacher

   b. A parent or guardian

   c. A judicial officer

   d. A social worker

   e. A physician

f. The child, if age 18 or ov[illegible]After the child has reached age 18, all procedural due process rights contained within these regulations shall automatically be transferred to the student unless he is declared legally incompetent.)

g. Any other person may request one of the above to make a referral. The person who receives such a request may, at his or her discretion, refer the child for an evaluation.

B. Due Process

1. Evaluation

a. Initial Evaluation

All children, unless otherwise specified within Section IV, who are considered for special education services shall have a comprehensive evaluation of their abilities and handicaps.

Those children considered for special education services in which intellectual, behavioral or emotional components may be determining factors in educational placement must have an individual psychological examination in addition to other assessments to determine their abilities and handicaps. The psychological evaluation would include an evaluation of cultural, language and adaptive factors.

b. Re-evaluation

All children enrolled in special education programs shall be comprehensively re-evaluated educationally or psychologically no later than three years after the last previous evaluation. The re-evaluation may take place within the three years upon the request of any person having the original authority to make an initial referral, with the approval of the placement committee.

Educational assessment shall be made on an annual basis.

c. Signed Parental Consent

The local school system must have signed, informed parental consent on file before any child is singled out for any evaluation other than routine operations happening to all children at some point in their school year (e.g., mass vision, dental, hearing and speech screening unless parent has previously filed a form of protest). After a child is referred for evaluation, the local school system shall send to the parents of such a child a notice containing the following.

(1) A statement that a referral has been made, including the name and position of the person making such referral. (The principal of the child's school shall assure that the parents have been notified of referral prior to this notice.)

(2) A statement describing the evaluation process.

(3) A statement that the parents will be informed of the place and date when the evaluation will begin, and the willingness of the appropriate school official to meet with the parents to discuss the reasons for referral and the nature of the evaluation.

(4) A statement that the parents will be informed within a reasonable period, but not to exceed 30 school days, of the results of the evaluation after its completion and of the right to challenge the results of the evaluation by presenting an independent evaluation by an approved examiner.

(5) A statement that the parents may be present at all placement committee

meetings where the educational placement will be determined and that such meetings will be held at a preannounced time.

(6) A statement indicating that the parents may agree to the evaluation of their child or may refuse such an evaluation. The parent's decision must be clearly indicated on the form, signed by the parent and placed on file in the local school system.

(7) A statement indicating that, in the event no response is received within 15 school days, an appropriate school official will contact the home to determine the reason for lack of response or the necessity of assigning a surrogate parent.

(8) A statement that no change will be made in the student's educational program until proper notification is given to parents and due process procedures are fulfilled.

(9) A statement that either party may appeal to the local and State Hearing Review Boards within 15 days of the parents' signed response, or lack of response, to the Parental Consent for Evaluation Form.

See Appendix A for model Parental Consent for Evaluation Form. This form contains all of the procedures listed above and which are necessary to insure procedural due process.

2. Initial Placement

No student shall be placed in a special education program until that student is the subject of a meeting of the Special Education Placement Committee which shall review all pertinent information and determine the appropriate program for that child.

The determination to place any child into a special education program shall not be made exclusively or principally upon results of tests administered during evaluation. All pertinent data on each child should be reviewed by the entire committee, including, but not limited to, the following.

a. Appropriate school age; that is, zero–21.

b. Observation data from the referring party and student records.

c. Where applicable, a current, thorough, individual educational evaluation, including a comprehensive assessment of achievement, visual-motor and perception skills.

d. A case history, with pertinent developmental and social data gathered from the parents.

e. Where applicable, an individual psychological examination by an approved examiner.

f. Any additional data as requested by the placement committee.

Exceptions or additions to these data are specified under each program area.

a. Special Education Placement Committee – Re-evaluation

Upon the request of any person having the original authority to make an initial referral, but no later than three years after the last placement decision, all children who are enrolled in special education programs shall be the subject of a meeting of the Special Education Placement Committee which will review all pertinent information and determine the appropriate program for such children based upon the new information.

Any time a change in educational placement is contemplated, the pertinent information must be reviewed and the change approved by the placement committee and the child's parents.

b. Signed Parental Consent

All children who are evaluated for possible special education services shall be subject to review by the placement committee. All children who are recommended by the placement committee to be placed in a special education program shall have signed, informed parental consent on file within the school system before placement can occur.

Preferably five school days after a child has been recommended for placement, but no later than 15 school days, the local school system shall send to the parents of such a child a notice containing the following.

(1) A statement of the specific proposed placement with a description of the educational components or curriculum opportunities available within that program.

(2) A statement that the placement committee minutes, school files, records and reports pertaining to the child will be available for inspection and for copying at reasonable costs.

(3) A statement of the reasons for the proposed action, including specific tests or reports upon which the proposed action is based.

(4) A statement of willingness of appropriate school officials to meet with the parents to discuss the reasons for the recommended placement, the nature of the placement, and to resolve differences of opinion.

(5) A statement that the burden of proof regarding the placement recommendation lies with the school system.

(6) A statement that the parents may obtain for their child an independent evaluation by a certified or licensed examiner.

(7) A statement that no change will be made in the child's educational status until the proposed educational placement is accepted by both parties.

(8) A statement indicating that the parents may accept or reject the placement recommendation. The parents' decision must be clearly

indicated on the form, signed by the parent, and placed on file in the local school system.

(9) A statement that either party may appeal the placement decision to the local and State Hearing Review Boards within 15 days of the parents' signed negative response, or lack of response, to the Parental Consent for Placement Form.

(10) A statement indicating that, in the event no response is received within 15 school days, an appropriate school official will contact the home to determine the reason for lack of response or the necessity for assigning a surrogate parent.

Please see Appendix B for model Parental Consent for Placement Form. This form contains all of the procedures listed in this section and which are necessary to insure procedural due process.

3. Hearing Process

a. Local Hearing Review Board (See Appendix C)

(1) Purpose

A local Hearing Review Board shall be established in every local system for the purpose of impartially judging the evaluation or placement decisions of the local Special Education Placement Committee.

Either the parents or local school system may file an appeal to the board when a conflict exists between the two parties.

(2) Membership

The review board shall consist of three members for any given hearing. The local school board may serve as the Hearing Review Board or may designate a Special Review Board. If a Special Review Board is designated these members shall be drawn from a minimum list of 10 eligible personnel maintained either by the local system itself or by a district agency designated by the local school system. The list should be on file in the local school system.

No member of the review board may participate in three consecutive hearings.

To be qualified as a member of the review board, a person shall

(a) Be unbiased

(b) Not be previously familiar with the child or his parents

Overall membership of the review board shall reflect the cultural, ethnic or racial background of the child.

The following are suggested agencies from which the list could be compiled.

Family and Children Services
Mental Health
Vocational Rehabilitation
College/University
Advocacy Group
Personnel from other local school systems outside the immediate geographic region or district.

(3) Procedures

Upon oral or written appeal to the chairman of the review board, a letter containing the following points shall be sent by certified mail to both parties:

(a) A statement that the hearing must occur within 20 school days of the official appeal.

(b) A statement of the date and location the hearing will occur.

(c) A statement that parents may inspect, at reasonable times, copies of all records pertaining to their child developed by the school system or by its agents or employees, including all tests or reports upon which the proposed placement action was based.

(d) A statement that parents may obtain for their child an independent medical, psychological or educational evaluation from an approved examiner.

(e) A statement that either party may be represented by counsel or other individuals at any stage of the hearing process.

(f) A statement that the hearing will be closed to the public unless the parent requests, in writing to the Hearing Review Board, that the hearing be open to the public. However, in such an instance, the school system's attorney, appropriate staff members of the local board of education and other persons requested by either the school system or the parents and approved by the review board may be present.

(g) A statement that both parties may present testimony or evidence to the review board and that both parties will have the opportunity to question witnesses.

(h) A statement that all proceedings will be recorded on tape or by other appropriate means.

(i) A statement that the burden of proof as to the appropriateness of any proposed placement will be upon the local school system.

(j) A statement that the Hearing Review Board has the authority to confirm or reject the decisions for placement of the child.

(k) A statement that the decision of the Hearing Review Board will be binding on all parties unless an appeal of the decision is made to the

State Hearing Review Board.

If no request for an appeal is made by either party within 10 days of the board's decision, the decision of the board will be implemented.

b. State Hearing Review Board

The State Board of Education shall serve as the review board or shall designate a review board for the purpose of impartially judging the decision of the local review board.

The decision of the State Hearing Review Board shall be binding on all parties unless an appeal to the appropriate court is filed.

4. Surrogate Parents

In order to provide every child eligible for a public education with the protection of procedural due process, even under circumstances where a child's parents or guardians are not known, are unavailable or the child is a ward of the State, each child should be assigned a surrogate parent. This would be the responsibility of the appropriate state agency; e.g., Department of Human Resources.

C. Least Restrictive Environment

In keeping with the procedural safeguards guaranteed to exceptional children and their parents by the Georgia Department of Education, the following regulations are set forth.

To the maximum extent appropriate, exceptional children in Georgia shall be educated with children who are not handicapped. Special classes, separate schooling or other removal of handicapped children from the regular class environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. Further, it is the policy of the Georgia Department of Education that handicapped children have the right to be educated with their normal peers, unless clear evidence is available that partial or full removal is desirable for the welfare of the child or other children.

When an exceptional child must be assigned to a special program, educational goals shall be specified; and when these goals are met, the child shall be returned to the most normal setting possible, consistent with the child's capabilities and educational needs.

1. Program Alternatives

A variety of program alternatives (continuum of educational services) shall be available to every child in the school system to meet the varying needs of exceptional children, including regular class attendance plus supplementary instructional services, part-time special program (resource room), full-time special class (self-contained class), special schools (TMR centers, psychoeducational centers, etc.), hospital and homebound instruction and residential placement.

2. Procedures

a. Parental consent for testing and changes in a child's educational program shall be obtained in accordance with the prescribed due process procedure.

b. In making decisions about the educational placement of handicapped children, an interdisciplinary team and multi-factored evaluations shall be instituted in keeping with the non-discriminatory testing and placement procedure.

c. Periodic review of the child's educational status shall be required in keeping with the non-discrimintory testing and placement procedure.

d. An educational plan for the child shall be developed in keeping with the non-discriminatory testing and placement procedure.

e. A formal appeal process concerning least restrictive alternatives program placement for handicapped children shall be in full effect in keeping with the due process procedure on appeals.

3. Implementation

The local school system shall assure that adequate provision is made for handicapped children whose educational needs must be met through interdistrict or regional programs. In carrying out such programs, however, the posture will be toward bringing the child back to a less restrictive program whenever possible.

D. Non-Discriminatory Testing and Placement

All components of the comprehensive evaluation shall include cultural, language and adaptive factors.

It is the responsibility of the school system to develop an appropriate educational plan for the child, based on a description of his strengths and weaknesses and giving full consideration to cultural, language and adaptive factors.

Future state plans shall reflect policies and procedures as interpreted by the Federal Government. These procedures will be disseminated as an addendum to the state regulations.

E. Confidentiality

It is the local system's responsibility to have on file procedures regarding handling of student records and appropriate safeguards thereof in accordance with current federal and state regulations relating to this matter.

Future state plans shall reflect policies and procedures as interpreted by the Federal Government. These procedures will be disseminated as an addendum to the state regulations.

ATTACHMENT

Docket 20

STATE OF HAWAII
BOARD OF EDUCATION

PART II. RULES FOR DEPARTMENT OPERATIONS

RULE 49. RELATING TO CHANGING THE EDUCATIONAL STATUS OF EXCEPTIONAL STUDENTS

49.1 Definitions.

"Exceptional students" means those students designated in Section 301-21, Hawaii Revised Statutes.

"Change in educational status" means:

a. Placement in a special education program which provides special facilities, equipment and/or instruction other than that provided in regular education.

b. Placement from a special education program to a regular education program.

c. Transfer from one special education program to another where such programs differ substantially with regard to the kind and type of education which is offered.

d. Transfer to a special education school or special education class outside the student's public school attendance area.

"Department" means the Hawaii State Department of Education.

"Special education" means Department special education classes in regular schools, special education schools, and licensed private special education schools contracted by the school district which are designed specifically for exceptional students.

"Parent" or "parents" means the natural or legal parent(s), guardian or other custodian of the student.

49.2 Applicability.

No change in the educational status of students shall be undertaken except in accordance with this rule.

49.3 Authority.

A change in the educational status of a student may be accomplished by the District Superintendent upon the recommendation of the Principal.

49.4 Procedures.

No student shall have his educational status changed without first being accorded notice and the opportunity for a hearing as hereinafter provided.

a. Educational Evaluation. Whenever any person working with a student, including the student's parents, has reason to believe that a change in educational status will be of benefit to the student, he shall advise the student's Principal. The Principal may request that an educational evaluation be conducted and, in such event, the evaluation shall be conducted under the direction of the District Superintendent's office by the appropriate district diagnostic team members, and/or other professional persons, including the teacher, involved with the student's educational program. If the Principal decides not to request the educational evaluation, the student and/or his parents may appeal such decision to the District Superintendent. The parents shall be notified of the educational evaluation before it is conducted. If upon completion of the educational evaluation it is determined that a change in educational status will be of benefit to the student, the Principal shall notify the District Superintendent in writing. The recommendation shall include a written report of the evaluation data upon which the recommendation is based. In the event that the educational evaluation does not result in a recommendation for a change in educational status, the student and/or his parents shall have the right to contest such action at a hearing conducted in accordance with this rule.

b. Conference. If a recommendation for change in educational status is made, the Principal shall arrange a conference with the parents of the student to discuss his or her placement. The student's present teacher may also attend. The Principal shall advise the parents of any alternative educational opportunities available to the student other than that proposed in the recommendation. If the parents accept the recommendation or any one of the educational alternatives, they shall sign an agreement authorizing the placement of their child.

c. Initiation of Proceedings. If neither the recommendation for change in the student's educational status nor any one of the educational alternatives is accepted by the parents, or should the parents fail to appear at the conference, the Principal shall immediately notify the District Superintendent and, upon receipt of such notification, the District Superintendent shall initiate formal hearing proceedings in accordance with this rule.

d. Notice; Contents. Proceedings shall be initiated by a written notice, in such form as the Department may prescribe, which shall be mailed (return receipt requested) to the student and his parent. Such notice shall contain:

(1) a statement of the recommended change in educational status and reasons therefor;

(2) a statement advising the parent of any alternative educational opportunities available to his child other than that proposed;

(3) a statement that prior to the recommended change in educational status, the student has a right to a hearing before the District Superintendent at which he may present evidence, call and cross-examine witnesses and be represented by a representative of his or his parents' choosing;

(4) a statement that such hearing may be requested in writing or orally by personal visit or telephone call to the District Superintendent;

(5) a statement that unless the hearing is requested by a date specified in the notice (which shall be not less than ten school days after the date the notice is mailed) the recommended action be implemented without such hearing.

e. Hearing. Upon receipt of a request for hearing, the District Superintendent shall schedule a hearing within ten school days and shall notify all interested parties of its date, time and place. The hearing shall be conducted by the District Superintendent or by a disinterested person designated by him who may be an officer or employee of the Department. Hearings shall be conducted as follows:

(1) it shall be private unless the student or his parents request that it be public;

(2) all parties shall have the right to present evidence, cross-examine witnesses and submit rebuttal testimony;

(3) the District Superintendent or hearing officer need not follow the formal rules of evidence;

(4) the District Superintendent or hearing officer shall impartially weigh the evidence and may request and consider any relevant records or information;

(5) parties may make a transcript or recording of the hearing;

(6) no later than five school days after the close of the hearing, the District Superintendent shall render a decision in writing stating clearly the action to be taken and the reasons therefor; such decision shall be mailed (return receipt requested) or personally delivered to the student and his parent;

(7) in the event that the hearing is conducted by a person other than the District Superintendent, the recommended decision and record shall be reviewed by the District Superintendent who may accept, reject or modify the decision, provided that, in the event any change is made, the District Superintendent shall state his reasons therefor in writing. In reviewing the recommended decision, the District Superintendent shall not consider matters outside the case record except with the agreement of both the student and his parents.

49.5 Appeal to Superintendent.

The student or his parent may appeal to the Superintendent of Education within ten school days of the District Superintendent's action which shall be deemed to be the date the decision is mailed. The change in educational status shall not be implemented pending such appeal unless the District Superintendent finds that delay in its implementation would be extremely detrimental to the student's best interests or that immediate implementation is necessary to avoid interference with the rights of other students to pursue their educations free from disruption. Upon an appeal, the Superintendent shall cause a statement of the reasons for the District Superintendent's decision, which shall include a determination of each issue of fact or law necessary to it, to be mailed (return receipt requested) to the student and his parents. In addition, the student and his parents shall be informed of their right to file exceptions to the decision and to present argument to the Superintendent at a specified date, time and place.

Effective Date: This rule shall become effective ten days after filing with the Lieutenant Governor of the State of Hawaii.

Adopted: October 4, 1973

Hiroshi Yamashita

Hiroshi Yamashita, Chairman
Board of Education

Approved as to Form

Deputy Attorney General

Date: 23 October 1973

Notice published of public hearing: Monday issue of the Honolulu Advertiser - August 20, 1973; Tuesday issue of the Honolulu Star Bulletin - August 21, 1973

APPROVED:

ACTING GOVERNOR OF HAWAII

Date: NOV 16 1973

LT. GOVERNOR'S OFFICE
1973 NOV 19 AM 8 16
REC'D. BY

DUE PROCESS PROCEDURES FOR IDAHO'S EXCEPTIONAL STUDENTS

DEPARTMENT OF EDUCATION
STATE OF IDAHO

DECEMBER, 1975

ROY TRUBY
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
BOISE, IDAHO

Part II DUE PROCESS PROCEDURES

School Practices with Exceptional Students' Programs

Idaho public schools provide education for all children within their districts. Among these children are some who are handicapped or exceptional in their ability to learn. Local school district policies and procedures for student rights and responsibilities apply to all students.

In providing special programs for exceptional students, however, certain procedures require additional attention. These procedures include: written parental permission for testing and placement of exceptional children; placement representing the least restrictive of alternatives; provision for informal hearings, hearing mediators, and alternative routes to resolve questions of special educational placement; and school district communication of these possibilities to parents, guardians, or surrogate parents of exceptional children.

Parental Procedures to Begin or Change Special Education Placement for their Child

Parents should contact the school district superintendent
137 if they believe their child is exceptional in his or her educational needs, if no appropriate special education services exist, if the child has not previously been served, or if a change in the present special education placement is requested.

Upon written parental consent, the superintendent can then make arrangements for the district Selection and Placement Committee to conduct a comprehensive assessment of the child. If the school district personnel are not available, contractual services from nearby school districts, as well as public or private agencies may be used. Further assistance can be obtained from the State Department of Education.

School personnel will recommend an educational program for the child based on findings of the comprehensive assessment. If parents give permission, the child's program can begin immediately. If parents do not give their permission, no placement or change in the child's program can be made until agreement can be reached.

Parents who are not satisfied with the school's program for their child or a proposed change in the child's educational placement may request an informal hearing. In order to arrange the hearing, parents, guardians, or surrogate parents of the exceptional child should notify the school district superintendent, who will communicate the request to the State Department of Education. Except in a few instances, it is not expected that informal hearings will need to be initiated. Most parental concerns about the educational placement of exceptional children can be resolved through informal discussions or conferences with local school district personnel.

Parental Permission for Testing

When there is a reason to believe that a child may
benefit from a special education program, written 138
permission for testing must be obtained from the parent before any formal testing is initiated. The written permission should be on file in the school records for the child involved.

The written request for testing permission should be in the primary language of the home and should state the reasons for the testing. Within the request letter, the parents should be advised that they may refuse permission for testing. They also should be invited to review all relevant school records before the testing and to review with school personnel the results of the testing after it has been completed.

No testing may proceed until parents give written permission for testing. When written parental permission for testing is on file with the school, comprehensive educational assessment of the child may be conducted.

Parental Refusal for Testing If the parents refuse to give permission for testing, the school should try to meet with the parents to discuss the situation. If agreement cannot be reached, the school may not initiate formal comprehensive evaluation of the child thought to be in need of a special education program or service.

Parent Failure to Respond If a parent does not respond to the school's repeated attempts by mail, phone and/or home visit to obtain testing permission, the school may go ahead with the comprehensive assessment of the child. Repeated attempts to contact the parent should be documented and kept on file.

The school should provide notice to the parents that they may review records, will be informed of testing results and proposed educational placement, and may request an informal hearing.

Informal Hearings

Prerequisites to an Informal Hearing Within five days of a parental request for a hearing, the school district personnel should schedule a conference with the parent to review the situation to date for the purpose of settling any differences and, if possible, avoiding the hearing. If resolution cannot be achieved at the conference, or if there is insufficient communication to convene such a conference, the informal hearing will be scheduled. Before the actual hearing the following steps should be taken:

1) Written notice of the proposed change in a child's educational program should be provided to the parents;

2) Parents should be allowed to inspect and copy at their expense school reports, files, and records pertaining to the child;

3) Parents should have the opportunity to obtain an independent evaluation of the child's educational needs at their expense;

4) An impartial mediator will be assigned by the State Department of Education upon notification by the district school superintendent and within ten days of such notice;

5) The mediator should provide to parents, school officials, and the State Department of Education notification as to the time and place of the informal hearing; the date of the hearing must be within forty days of original request; and

6) Parents may request attendance at the hearing of any officer, employee or agent of the school or State Department of Education who may have information relevant to the question of the needs, abilities, and/or proposed status of the child.

The Mediator The person assigned to preside at an informal hearing must be able to assure that proper procedures are followed and that the rights of the parties are protected. An impartial mediator must be unbiased, disinterested, and independent of either the local school district or the State Department of Education.

Upon initiation of hearing procedures by the parent, it shall be the responsibility of the school superintendent to notify the State Department of Education of such proposed action. In addition, the superintendent has the responsibility of informing the district school board of such action. Within ten days, a mediator will be assigned by the State Department of Education.

As long as Title VI-B funds or other federal or state financial resources are available, compensation of mediators will be the responsibility of the State Department of Education.

Surrogate Parents In educational matters which normally involve parents or guardians, surrogate parents may also represent the interests of the exceptional child. Children for whom surrogates may exist include those in foster homes, state institutions, and detention homes.

Surrogates have the same opportunities and responsibilities as parents in education decisions of identification, evaluation, and special education placement. They may give or withhold consent for proposed testing and/or special education placement. They may also request informal hearings.

Procedures at the Hearing The informal hearing should be conducted in accordance with the following procedures:

1) The mediator will preside and should conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions,

2) Parents and the school may have representatives, including legal counsel or other professional persons, attend the hearing;

3) The hearing should be open to the public unless the parents request a closed hearing;

4) Parents, school personnel, and their respective representatives should have an opportunity to question all presenters at the hearing;

5) If the child is over the age of 18, he or she may attend the hearing;

6) If the child has not reached the age of 18 the parents have the right to determine whether he/she should attend the hearing; if the mediator finds that attendance by the child would be harmful to his/her welfare, he may recommend that the child may be excluded from portions of or the entire hearing; and

7) During the informal hearing, interpreters for the deaf or interpreters fluent in the primary language of the home should be available.

Record of the Hearing A tape recording or other verbatim record of the hearing should be made. Such a record shall remain with the State Department of Education. Parents and school district personnel may have access to this record upon formal request at minimal expense for reproduction, if necessary.

Recommendations of the Mediator The mediator's recommendations should be issued in accord with the following:

1) The written recommendations should be sent to parents, the school district superintendent, the State Department of Education, and to their respective representatives (should they request written notification at the close of the informal hearing);

2) The recommendations should include findings of fact, conclusions, and the supporting reasons for the final recommendations;

3) The recommendations of the mediator should be based solely on presentations made at the informal hearing;

4) A summary of the proceedings at the hearing should be made including any materials or statements specifically requested by any of the parties to appear in the record;

5) Upon request of the parents or the school, a copy of the tape recording or other verbatim record of the hearing will be provided by the State Department of Education;

6) A statement must be included that the mediator's recommendations are those of an impartial third party, are not binding on either party involved in the hearing. Recommendations of a mediator will assist the school district and the parents to resolve differences in matters of educational evaluation and special education placement and/or may be preliminary to further actions resolving the matter. Alternatives to further action include:

   1. Informal hearings requested with the State Superintendent of Public Instruction;
   2. Informal hearings requested with the State Board of Education; and/or
   3. Formal court proceedings.

Notice of Change in a Child's Educational Program

Educational programs for exceptional children are often more flexible than programs for regular students. However, no placement into or out of regular and special education classes, or major changes within the child's special education program, can be made without notification and consent of the child's parents. The proposed educational change should be explained both orally and in writing in the primary language of the home.

The written notice should explain the reasons why the proposed change is being considered for the child, what the alternatives are, and why the proposed educational change represents the least restrictive of the alternatives available.

The notice to parents should also mention on what basis (tests or reports) the proposed change is made. Parents may inspect school records and have copies of records made at reasonable cost to them. They may request an informal hearing should they object to proposed changes in their child's educational program, and the notice should remind them of this possibility.

Parents may obtain an independent educational evaluation, should they disagree with the assessment made by school district personnel. A list of local and regional agencies which supply such services at no cost or at minimal cost to the parent can be made available by the school to the parents.

Periodic Review of Educational Placement

Idaho's special education regulations call for an annual review to be made of each exceptional child's placement on the basis of the child's progress within that placement. "Annual" is interpreted to mean once near the end of each school year.

Parents of students in regular programs are often invited to periodic parent-teacher conferences in connection with their children's progress. In the same way, school personnel are encouraged to invite parents of exceptional children to annual conferences reviewing the progress of their children.

At least a week before each review conference, written communication should be sent to parents by the school. It should explain the time and place of the meeting, the reason for the conference, and the specific tests and/or evaluation procedures which will be used to assess progress.

Independent Educational Evaluation

Parents should be provided the opportunity to obtain an independent educational evaluation other than the school's comprehensive assessment of the child. This independent evaluation will be an expense of the parent. The extent of the evaluation would depend on the nature and severity of the handicapping condition.

The school should provide to parents the names, addresses and telephone numbers of public agencies where independent educational evaluation services can be obtained at no or minimal expense.

Least Restrictive Educational Setting

Handicapped children will be educated with non-handicapped unless the severity of the handicap makes other arrangements necessary.

When an exceptional child must be assigned to a special program, educational goals should be set. If and when these goals are met, the child should be returned to as near to normal setting as is possible. Reassessment of educational goals and objectives should be made for each student annually (no later than eight months after placement) and during each school year.

The school district is required to inform the State Department of Education of the types of program alternatives available in connection with state approval for funding. If gaps or deficiencies exist which limit the range of placement possibilities, the State Department will notify the school to supply a plan, with timelines, to provide program alternatives.

When there is evidence to suggest that the school is not following the least restrictive alternative policy, procedures should be worked out between the State Department and the school to bring the child back into a less restrictive program. These procedures may include: 1) inservice training for regular and special education personnel in accommodation of exceptional children in the regular classroom; 2) State Department technical assistance to a school district on both an individual basis and through regional/statewide conferences; and 3) monitoring of the educational progress of the child whose placement is under consideration.

Non-discriminatory Materials and Procedures

Section 2.2.3.3 of Idaho's Administrative Rules and Regulations for Special Education indicates that schools must "select and utilize screening, testing, and evaluative instruments which are not racially or culturally discriminatory."

Any tests or evaluative instruments which discriminate against students due to language, racial or cultural differences must be modified and/or interpreted with respect to the language, culture or background of students being tested.

Verbal and written school-parent communications where English is not the primary language of the home should be both in English and in the language spoken.

Interpreters for deaf parents should be provided in situations where informal or formal verbal communications are involved.

Burden of Proof

The final responsibility of an appropriate educational opportunity for a child lies with the child's parents. The local school district may not proceed with comprehensive evaluation and/or special education placement of a child thought to be exceptional if the parent refuses to give written consent for such evaluation or placement. Nor may the school district personnel request an informal hearing in an attempt to prevail over parent-made decisions.

Documentation of teacher referrals and anecdotal records, testing or evaluation procedures and results, and chronological records of communications with parents are the responsibility of school personnel and may be used as information, along with other records, at any stage in the appropriate educational planning for an exceptional child.

Part III CONFIDENTIALITY: Management Guidelines for Records of Students

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act, enacted as part of the Education Amendments of 1974, Title V, Section 513-514, establishes that parents of all children have access to their children's school records, and limits the disclosure of personally-identifiable information from school records without parental consent.

Records of Exceptional Students

School records are interpreted to include: identifying data, academic work completed, level of achievement, and attendance data; scores on standardized intelligence, aptitude and psychological tests, including results of the child's comprehensive evaluation/assessment; interest inventory results, health data, family background information, teacher or counselor ratings, observations and verified reports of serious or recurrent behavior problems.

Two separate types of school records may not be kept. However, confidential personal working files of school psychologists, social workers, counselors, teachers or substitute teachers may be maintained. Personal and confidential files containing working notes, transcripts of interviews, clinical diagnoses and memory aids for their own use are permissible. Data considered to be personal property should be in the possession of the professional, and used only by that individual.

Where the consent of a parent is required for the release of educational records, permission shall be in writing, be signed and dated by the person giving such consent. It shall include reason, records to be released, and the names of the parties to whom the records will be released.

The school may, without consent of parents, release a student's permanent record file to the following:

1) Other school officials, including teachers, within the district who have a legitimate educational interest;

2) Officials of other schools in which the student intends to enroll; however, parents must be informed of the transfer, receive a copy of the record, if requested, and have an opportunity for a hearing regarding the content of the record; and

3) Authorized representatives of: a) Idaho State Department of Education; b) Secretary of U.S. Department of Health, Education and Welfare; or c) Comptroller General of the United States.

The school or any school personnel may not divulge, in any form, to any persons other than those listed above, any information contained in school records, except:

1) With written consent from the student's parents specifying records to be released and to whom; a copy of the records to be released must be sent to the student's parents, if desired by the parents; and/or

2) In compliance with judicial order of administrative agencies having the power of subpoena; parents should be notified of all such orders and the school's compliance.

Annual Notification of Parents

Annual oral and written notification must be made to parents that their child's individual records are available to them for review. The school district shall outline the procedures to be followed if the parent wishes to review the records, or participate in the annual review of educational placement.

Record Retention Practices

All personally-identifiable data which labels a child as handicapped or which indicates a child has been placed in a special education program must be physically destroyed by shredding or burning within five years from the time that educational services to the child are terminated or the child graduates from secondary school. Routine school data such as permanent records may be retained.

STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION
OFFIC SPRINGFIELD, ILLINOIS 62706 ION

RULES AND REGULATIONS TO GOVERN THE ADMINISTRATION AND OPERATION OF SPECIAL EDUCATION

(Filed pursuant to Chapter 122,
Article XIV, Illinois Revised Statutes, 1971)
Effective October 1, 1974

THE DELIVERY OF SPECIAL EDUCATION SERVICES: IDENTIFICATION AND EVALUATION OF EXCEPTIONAL CHILDREN

ARTICLE IX

9.01

The educational rights of exceptional children and the availability of special education programs and services shall be made known to the public.

9.02

The local school district shall seek out and identify all exceptional children who may be in need of special educational assistance.

1. Each district shall conduct an annual registration of all three-year-old exceptional children and any other exceptional children who have not previously been registered by the public schools.
2. Systems to screen and identify exceptional children shall be developed and continuously implemented.
3. A specified method of referral shall be made known and accessible to all concerned persons.
4. All children who may require special education services shall be referred to the designated resource for evaluation and appropriate educational planning.

9.03

All children who have been referred shall be given an evaluation appropriate to the problems manifested.

1. When the child experiences problems which interfere with his learning or which suggest that he will require either a special education instructional program or special education instructional services, he shall be given a complete case study evaluation.
    a. A case study evaluation shall include, but not be limited to:
        1. Social developmental study (including parental consultation)
        2. Medical history and health status
        3. Vision and hearing screening
        4. Academic history
        5. Educational evaluation
        6. Psychological evaluation

    b. The intensity of these evaluative processes and the introduction of additional evaluative techniques shall be determined by the nature and severity of the child's problems.
2. When the child experiences problems which suggest that he will require only speech or language service (itinerant or resource),

or home and hospital service for health related reasons, he shall be provided with only those evaluative processes which are necessary or appropriate to the determination of his needs.

9.04
In those instances in which a child has been evaluated by qualified personnel outside the school district, that evaluation may be considered acceptable for determining eligibility for special education. If the nature of the evaluation is such that it would ordinarily be done by the school district, the evaluation shall be reviewed by a professional of the same discipline within the school district.

9.05
Each child shall be evaluated in his primary language.

1. If the child's primary language is determined to be other than English, the district shall utilize one or more of the following procedures:

    a. Use a psychologist fluent in both the child's primary language and English
    b. Use an interpreter to assist the psychologist both with language and testing
    c. Use test instrument administered by a psychologist which does not stress spoken language and which is considered valid and reliable performance measures of intellectual functioning.

2. If the child's receptive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments which do not stress a spoken language and one of the following procedures:

    a. Use visual communication techniques in addition to auditory techniques
    b. Use a communication aide (interpreter) to assist the evaluative personnel with language and testing.

9.06
When the child's problems indicate the need for a case study evaluation, the parents or guardians shall be notified and given the opportunity for a personal conference concerning the child's problems prior to the implementation of the evaluation.

9.07
The case study evaluation and determination of eligibility for special education services shall be made within sixty (60) school days from the date of referral by school personnel or the date of application for admittance to the public school by the parent or guardian of the child.

9.08
The local school district shall be responsible for assisting the parents in locating and utilizing extended diagnostic processes when these are

indicated by the nature of the child's problems. No child shall be prohibited from receiving special education services because he is financially or otherwise unable to obtain the extended diagnostic services.

9.09
Eligibility for special education programs and services shall be determined by the presence of one or more of the following exceptional characteristics:

1. Visual impairment - The child's visual impairment is such that he cannot develop his educational potential without special services and materials.

2. Hearing impairment - The child's residual hearing is not sufficient to enable him to understand the spoken word and to develop language, thus causing extreme deprivation in learning and communication. Or, he exhibits a hearing loss which prevents full awareness of environmental sounds and spoken language, limiting normal language acquisition and learning achievement.

3. Physical or health impairment - The child exhibits a physical or health impairment, either temporary or permanent, which interferes with his learning and/or which requires adaptation of the physical plant.

4. Speech and/or language impairment - The child exhibits deviations of speech and/or language processes which are outside the range of acceptable variation within a given environment and which prevent full social or educational development.

5. Learning disability - The child exhibits one or more deficits in the essential learning processes of perception, conceptualization, language, memory, attention, impulse control, or motor function.

~~6.~~ Educational handicap - The child exhibits educational maladjustment related to social or cultural circumstances.

7. Behavioral disorder - The child exhibits an affective disorder and/or adaptive behavior which significantly interferes with his learning and/or social functioning.

8. Mental impairment - The child's intellectual development, mental capacity, adaptive behavior, and academic achievement are markedly delayed. Such mental impairment may be mild/moderate, severe, or profound.

9. Multiple impairment - The child exhibits two or more impairments, severe either in nature or in total impact, which significantly affect his ability to benefit from the educational program.

THE DELIVERY OF SPECIAL EDUCATION SERVICES:
PROGRAMMING FOR EXCEPTIONAL CHILDREN

ARTICLE X

10.01
Eligibility for, and the provision of, a special education instructional program or instructional services shall be determined at one or more multidisciplinary staff conferences.

1. Participants in these conferences shall include appropriate representatives of the sending school, the special education director or designee, all those school personnel involved in the evaluation of the child, and those who will be responsible for the provision of the appropriate special education services.

2. The purposes of the conferences shall be to:

   a. Develop a profile of the child's learning characteristics, sensory and motor skills, and behaviors
   b. Determine the child's unique educational needs
   c. Determine the extent to which the standard program can meet these needs
   d. Determine the nature and degree of special education intervention
   e. Develop an educational plan which indicates specific objectives to be attained by the child.

3. To achieve these purposes the participants in the conferences shall consider all information developed through the case study evaluation. The opinions and concerns of the child's parents shall be presented as a significant part of this information.

10.02
A written report of the results and recommendations of the conference shall be kept on file by the local district and by the special education cooperative unit. This report shall be dated, shall list the names of all those in attendance, and shall be signed by the person who has prepared it.

10.03
The parents or guardians of each child receiving a case study evaluation to determine his need for special education shall be provided with an understandable explanation of the evaluation and of the educational plan drawn to meet his needs.

1. When the educational plan calls for placement in a special education instructional program or instructional services such placement shall take place as soon as possible but not later than the beginning of the next school semester.

2. When placement in a special education instructional program or instructional service is not possible prior to the next school semester, the local district shall indicate to the parents or guardian of the child the nature of the services the child will receive in the interim.

3. Written indication of the services provided to the child during the interim between placement determination and actual placement shall be kept on file and available for review by the Office of the Superintendent of Public Instruction.

10.04

When the educational plan involves an initial placement in a special education instructional program or instructional service, the parents shall receive notification of such determination at least ten (10) calendar days prior to the proposed placement. Such notification may take place at a conference between the parents and appropriate school personnel, or by a letter containing a written statement of the school's placement decision, including:

1. The reason for the placement decision
2. The special education rule or regulation and any local district policies upon which the action is taken
3. A description of the tests and reports upon which placement is predicated
4. Plans for implementing the decision
5. Alternative educational opportunities available to the child, if any
6. Information regarding the right to a review of the proposed placement.

10.05

When the notification occurs at a conference, the conference shall take place at least ten (10) calendar days prior to the projected date of placement. The parents shall be given a written statement, as specified above, at that time.

10.06

If the parents are advised as required, and approve the placement decision by not requesting a review of same, placement shall occur. By mutual agreement between parents and school personnel, the ten (10) day period may be waived and placement may be made before the projected placement date.

10.07

If the parents object to the proposed placement, they may request a review of the educational plan.

1. A request for a review of the child's educational placement shall stay any special educational placement until the review has been completed.

2. If the child has already been placed in a special education program, the parents and school personnel may mutually agree

that the placement may stand while the matter is being reviewed.

10.08
When special education placement has been authorized, procedures which will assist the child in making the transition into the special education program shall be developed and implemented.

10.09
All programs and services provided by the school district shall be made available to the child receiving special education services.

10.10
Each child in a special education instructional program or receiving a supportive service shall be provided with all additional special education services which he may require.

10.11
A child receiving special education services shall be provided with those materials and equipment which are essential to his educational development. All equipment and materials utilized in a special education program or service shall be appropriate to the children's needs and in adequate supply.

10.12
The educational development of a child receiving special education services shall be evaluated and reported in relation to the individual objectives established for him.

10.13
A comprehensive report of the educational development of a child receiving special education services shall be provided to the parents or guardians of the child at intervals consistent with the district's regular reporting process.

10.14
Within the limitations of his exceptional characteristics, each child receiving special education services shall also be given regular reports concerning his educational development.

10.15
The educational status and continued placement of each child in an instructional program or receiving special education supportive services shall be reviewed annually in a multidisciplinary staff conference.

1. Utilizing appropriate evaluation information, including teacher and parent opinions, this review shall determine the extent to which the child has met the objectives set for him, recommend further diagnostic evaluation if this is indicated, and revise the educational plan as necessary.

2. When further diagnostic evaluation is indicated and/or requested by the teacher, parents, or other knowledgeable persons, it shall be completed within sixty (60) school days.

10.16
An annual report concerning each child enrolled in a special education instructional program or receiving direct special education supportive services shall be provided to the child's home school or district.

10.17
Notification of ongoing placement of a child in a special education instructional program or instructional service shall be communicated to the parents by mail at least ten (10) calendar days prior to the beginning of school each year.

10.18
Notification of major changes in placement (excluding changes in levels; e.g., primary to intermediate) shall be communicated to the parents in the same manner as an original placement. When a major change in placement is proposed, the parents shall have the right to a review of the proposed program.

10.19
When the provision of a special education instructional program or instructional service is to be terminated, the parents of the child shall be informed prior to the termination.

10.20
When the child returns to the standard program, the local district and the special education cooperative unit shall assist him in making a successful transition. This shall include the provision of supportive services which are sufficient to facilitate the child's educational growth and of periodic follow-up to determine the child's educational status.

REVIEW OF EDUCATIONAL PLACEMENT

ARTICLE XI

11.01
The right to a review of the educational placement of an individual child shall be available to the parents or guardians of all children who have exceptional needs. This right to a review shall be available regarding, but not limited to, the following:

1. Failure of the local district, upon the request of the parent, guardian, or the Office of the Superintendent of Public Instruction, to provide a case study evaluation to determine the child's need for a special education instructional program or special education instructional service.

2. Failure of a local district to provide the special education program or special education supportive service for which the child has been found eligible under the provisions of these Rules and Regulations.

3. Determinations made outside the educational system indicating that a child is eligible for special education instructional programs and/or supportive services.

4. Initial placement of a child in a special education instructional program or supportive service.

5. Continuing placement of a child in a special education instructional program or supportive service.

6. Major changes in the program or placement being provided an exceptional child.

7. Removal of a child from a special education program or supportive service.

8. The expulsion or suspension totaling individually or in aggregate twelve (12) or more days in a given school year of a child who is in a special education instructional program or who receives special education supportive services.

9. The expulsion or suspension totaling individually or in aggregate twelve (12) or more days in a given school year of a child who is eligible for a special education instructional program or supportive service but who is not receiving such services.

10. Reasonable belief by the parent or guardian that a child who has been expelled or suspended has been so expelled or suspended for behavior or a condition which is, or results from, an exceptional characteristic as defined in Illinois Revised

Statutes, 1973, Chapter 122, Section 14-1.01 through 14-1.07 and these Rules and Regulations.

11. Provision of special education programs or services in an amount insufficient to meet the child's needs.

12. Failure of the local district to fulfill the recommendations of the multidisciplinary staff conference.

13. Recommendation for the graduation of an exceptional child.

14. Failure of the district to comply with any of these Rules and Regulations.

11.02
Information regarding the right to a review of educational placement, as prescribed herein, shall be provided to all parents in the school district.

11.03
The request for a review of educational placement shall be made to the superintendent of the school district wherein the child resides.

1. A request for a review of educational placement for an exceptional child may be made at any time significant new information is available or different circumstances prevail; otherwise, the district need not grant a review more than once each calendar year.

11.04
The review at the local level shall occur as soon as possible, but not later than fifteen (15) calendar days of the request.

1. If the district decides not to honor the request for a review, the parents or guardian of the child shall be notified of this denial. Such notification shall be made in writing within ten (10) calendar days of the request and shall contain the reasons for the denial.

2. If the local district fails to notify the parents of their right to a review of educational placement, as prescribed in these Rules and Regulations, or if the request for a review is denied either directly or by failure to provide such a review, the parent or guardian may appeal such a denial directly to the Office of the Superintendent of Public Instruction. In the event of such a direct appeal, the Office of the Superintendent of Public Instruction shall have the right to conduct a review of the child's educational placement or to require that the local district conduct such a review.

11.05
The local review shall be in the form of a conference between the parents, their representatives, the special education administrator, the principal

authors of the placement decision, and appropriate local district personnel.

1. The superintendent of the child's home district or any designated district administrator other than special education personnel shall act as chairman of the conference.

2. The chairman shall give the parties to the review at least five (5) calendar days notice of the conference date.

3. The chairman shall keep order, receive documents, and, in general, conduct an orderly proceeding.

11.06
The local review shall seek to establish any or all of the following:

1. That the child has needs which require special education services

2. That the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree

3. That the diagnostic profile of the child on which the placement decision was based is substantially verified

4. That the proposed placement is directly related to the child's educational needs

5. That the child's rights have been fully observed.

11.07
Prior to the local review conference, the parents and/or a representative of their choice and at their expense may request an opportunity to examine all information, including the test instruments and raw data, on which the placement decision was made. The parents may also request that their representative be given the opportunity to meet with the appropriate school personnel to further discuss the reasons for the placement recommendation. If the parents have no representative to assist them, but express a desire for such representation, the director of special education shall assist the parents in locating and utilizing an appropriate person.

11.08
A typewritten record of the local review conference shall be made by a court reporter who shall be paid by the district. In lieu of a court reporter, a tape recorder followed by a typewritten transcript may be used. The school district representative and the parents must sign the typewritten transcript.

11.09
At the local review conference, representatives of the school shall first present their findings and the reason for the proposed placement. This presentation may include verbal reports, the written record of the multidisciplinary conference at which the educational plan was developed, and any other information deemed relevant. The parents and their repre-

sentatives may question school personnel about the information which has been presented. The rules of evidence shall not apply to the conference.

11.10
The parents and their representatives may then present appropriate witnesses, reports of tests taken, and other facts which they may deem relevant. School personnel may subsequently question the information presented by the parents or their representatives.

11.11
After considering the facts as presented at the local review conference, the school officials shall recommend to the parents an affirmance of the placement decision, a denial of the decision of placement, or alternative procedures to meet the educational needs of the child, which may include further evaluation.

11.12
The local review decision shall be communicated to the parents or guardians by certified mail within five (5) school days of completion of the conference. The letter shall include the reasons for the decision.

11.13
The notice of the local review decision shall inform the parents or guardian of their right to appeal the local review decision directly to the Office of the Superintendent of Public Instruction.

1. If the parent or guardian wishes to appeal the local review decision, a request for a state-level review shall be submitted, in writing, to the local district superintendent within five (5) school days of the receipt of the local review decision. By mutual agreement, and for good cause, the time to request a state-level review may be extended to thirty (30) calendar days.

2. The school district shall provide the parents or guardian with a request form to facilitate this process.

11.14
After the receipt of a request for a state-level review, the district shall prepare a transcript of the local review, to include copies of all documents introduced at the conference. Copies of the transcript shall be mailed to the parents and to the Legal Division of the Office of the Superintendent of Public Instruction within seven (7) calendar days of the request for a review.

11.15
A request for a review by the Office of the Superintendent of Public Instruction shall stay any special education placement until the review has been completed, unless the parents and school personnel mutually agree to continue a placement which has already been effected.

11.16
Upon the receipt of the request for a state-level review of an educational placement, the Superintendent of Public Instruction shall designate an

impartial reviewing officer, who shall be an employee of the Office of the Superintendent of Public Instruction.

11.17

The reviewing officer shall examine the placement based upon a study of the transcript. He may request further information, either by oral testimony or in writing, and whatever technical assistance he deems necessary.

1. A state-level review by the Office of the Superintendent of Public Instruction pursuant to a request from the parent or guardian of an exceptional child shall include, but not be limited to, a determination of compliance with these regulations and establishment of any or all of the following:

    a. That the child has needs which require special education services
    b. That the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree
    c. That the diagnostic profile of the child on which the placement decision was based is substantially verified
    d. That the proposed placement is directly related to the child's educational needs
    e. That the rights of the child have been fully observed.

11.18

The state-level review by the hearing officer shall be held within ten (10) calendar days of the receipt of the transcript. A report of the review shall be submitted to the Superintendent of Public Instruction, who shall decide the matter within thirty (30) calendar days of the date that the transcript is received. The Superintendent of Public Instruction may dismiss any review he deems lacking in substance.

11.19

The local school district shall be responsible for implementing the decision of the Superintendent of Public Instruction.

RULE S-1

As adopted by the Commission on General Education of the Indiana State Board of Education on September 5, 1973, and approved by the Governor on September 13, 1973.

S. SPECIAL EDUCATION

Special Classes (Implementing I.C. 20-10-26-1 through 9, I.C. 20-1-6-1 through 19, I.C. 20-1-7-1.

SECTION I - GENERAL INFORMATION

A. AUTHORIZATION TO CONDUCT SPECIAL EDUCATION PROGRAMS

The State, through its Constitution and Laws, has assumed responsibility for the education of all children. Local school corporations have been delegated the job of meeting the basic responsibility. This rule sets out parameters of the various types of educational programs which must be instituted, as necessary, to fulfill that delegated obligation. This rule also provides guidelines for the establishment of special educational programs eligible for state funding assistance.

Such special education programs and classes are to be conducted by a public school corporation, individually, jointly or by transfer. Reimbursement cannot be made to other agencies.

B. JOINT SCHOOL SERVICE AND SUPPLY COOPERATIVE PROGRAMS AND JOINT SCHOOLS

Special education programs and classes may be approved when two or more school corporations, by written agreement of the respective school authorities thereof, decide or organize such classes and programs jointly in the schools of any one or more of such school corporations (refer to IC 1971, 20-1-6; IC 1971, 20-5-11-1; IC 1971, 19-5-1). Reimbursement for such approved programs will be made to the administering school corporation. Joint schools may also be established under IC 20-1-6-1 and IC 18-5-1.

C. GRANTING OF DIPLOMAS AND CREDIT FOR SUBJECTS TAUGHT

Students enrolling in special education programs or classes in regular public school programs receive the same credit as other pupils, providing they meet the requirements of the Commission on General Education. The governing board of each school corporation, or school district operating under the authority of a county superintendent of schools and township trustee, required or authorized to maintain special education programs, shall issue a diploma, the same as that issued to all students completing approved programs, to each person who has satisfactorily met the minimum requirements of the instructional program developed and adopted according to Rule G-1, approved by the Department of Public Instruction and the Commission on General Education.

D. ASSIGNMENT OF AVERAGE DAILY ATTENDANCE OR A DAY'S MEMBERSHIP

Students attending special education programs in their home school corporation shall be counted in the average daily attendance and/or a day's membership for state support of that school corporation. Students enrolled in joint services and supply programs or joint schools shall be counted in the average daily attendance and/or a day's membership for state support of that school corporation. Students enrolled in joint services and supply programs or joint schools shall be counted in the average daily attendance and/or day's membership for state support by the school corporation agreed upon by the participating school corporations. Transfer pupils are figured in the average daily attendance or average daily membership of the receiving corporation. Pupils receiving homebound instruction shall be reported as having regular full-day attendance on Form 30.

E. MEDICAL AND PSYCHOLOGICAL REPORTS

All medical, psychological, and other reports pertaining to the approval of students in special education programs shall be made at least every three (3) years and shall be made easily accessible to the special teacher, therapist, and/or clinician directly concerned with the student.

F. MINIMUM INSTRUCTIONAL DAY

The instructional day for special education programs shall be equivalent to the instructional day for regular school programs for pupils of the same age levels. Waivers for program exception to this rule will be considered when a justification is made in writing to the Division of Special Education and granted upon approval of the State Superintendent of Public Instruction. Written requests for waivers must be made no less than sixty days prior to the date the change is to be implemented.

G. APPEALS

Appeals of any kind in reference to Rule S-1 may be made to a state board for special education appeals, the members of which shall be designated by the Governor. Appeals to the board may be made after procedures as set out in this document are followed.

H. ADDITIONAL EVALUATION

In all cases where physical, mental, or emotional problems are cited as primarily or significantly contributing in a decision to offer a pupil special education services and when a local hearing has been held, and in which the parent so wishes, the parent may furnish or may ask the State Superintendent of Public Instruction to furnish a duly licensed school psychologist, psychiatrist, or medical doctor who shall examine the pupil and make recommendations to the state board for special education appeals.

Expenses incurred through requests to the state superintendent for medical and psychological services shall be borne by the local school system from which the appeal to the state board for special education appeals originates.

I. ADMINISTRATION OF MEDICINES

No medicines will be prescribed or given to any student unless it is with the knowledge and consent of the parent or legal guardian and prescribed by the patient's family physician or physician designated by the parent or guardian to do the examination to determine such a need.

SECTION II - DEFINITIONS AND PROGRAM SPECIFICATIONS

Programs to be approved under the provisions of these statutes shall provide instruction for pupils between six and eighteen years of age inclusively, and may provide programs for pupils between the ages of three and six, and eighteen and twenty-one, and who are not in attendance in any of the residential schools of the state. Special education programs for deaf students may be approved for children as young as six months of age.

The determination of the proper educational program for a student is the responsibility of the school superintendent. Specialists from the school staff, consultants or parents shall assist in providing and interpreting appropriate information. After determination of proper educational program for a student is made by the school superintendent with proper advice from specialists and consultants of the school staff, written permission of the parent or guardian must be obtained before the child is officially assigned to a special education class.

To be fully effective, educational programming for students who may benefit from special education placement requires a team effort involving parents, teachers, school administrators, and specialists. Teamwork of this kind rests upon mutual trust and frequent communication; therefore, it shall be the responsibility of the superintendent of the local school corporation to make certain that the parents (or legal guardian) of any pupil referred for any specific, individual tests which are intended to determine cause, extent or possible remediation of suspected learning difficulty are fully informed of the referral and the reasons for the referral before any such tests are administered. Such information must be presented to the parent (or legal guardian) in a personal interview by a person designated by the superintendent of the school corporation of which the child is a resident. The written consent of the parent or legal guardian must be obtained before any such tests are administered. If a personal interview for the purpose of informing the parent or legal guardian of the referral is refused by the parent or legal guardian, the superintendent or his representative may then inform the parent or legal guardian by mail.

Preliminary group screening tests concerning physical health or mental ability which are administered to all students do not require a personal interview.

No child shall be excluded from or transferred out of a regular public school assignment unless such child is provided (a) free and adequate alternative educational service suited to the child's needs and (b) written notice, an opportunity for a constitutionally adequate prior hearing and periodic review of the child's status and the adequacy of any educational alternative.

The superintendent or his designee of the school attended by the child shall convoke a case conference committee to consider the appropriate educational placement for the child. The case conference committee shall be composed of appropriate school administrators, specialists, special education teachers, and/or regular education teachers who may have knowledge of the child and the parents of the child being considered for special education programs, unless the parents choose not to participate.

The case conference committee coordinator shall make arrangements for:

(a) the assembly of all relevant data and reports concerning the child and,

(b) the administration of further tests and evaluations to aid in assessing the educational needs of the child.

Provided that:

> No pupil shall be compelled to submit to medical examination whose parent objects, in writing, to such examination.

Within sixty (60) days of the initial request or recommendation, the full committee must meet, having been provided with all relevant reports and data prior to said meeting, and recommend an educational program for the child. A report embodying that recommendation and the reasons therefore shall be prepared by the coordinator and shall be forwarded to the local school superintendent or his designee within twenty (20) days of the case conference meeting. The superintendent shall provide for the special educational needs of the child by way of an educational placement as close to the norm as possible.

The superintendent shall prepare a report which includes both the placement proposed and a statement of reasons therefor, a copy of which shall be sent to the child's parents. Accompanying said report to the child's parents, there shall be a notice of the right to a hearing before a Hearing Officer if there is an objection to the placement.

Whenever the superintendent proposes to take action regarding a child's special education placement, denial of placement, or transfer, the child's parent or guardian shall be informed by written notice of said proposal. If the parent or guardian opposes the proposal, he shall make a written demand for a hearing. Such hearing must be conducted within twenty to forty-five (20-45) days after the demand. Pending the outcome of the hearing, the child must be provided with interim educational services. In carrying out the above, the following procedures shall be followed.

(i) If the child is not currently provided with a free educational program, he shall be provided with the program deemed suitable by the local school system staff pending a decision by the Hearing Officer pursuant to this procedure. If the child is already being provided with a free educational program, changes to which the parents or guardians object shall not be made pending the hearing decision.

(ii) Notice required hereinbefore shall be given in writing by registered mail to the parent or guardian of the child.

(iii) Such notice shall:
  (a) describe the proposed action in detail;
  (b) clearly state the specific and complete reasons for the proposed action, including the specification of any tests or reports upon which such proposed action is based;
  (c) describe any alternative educational opportunities available on a permanent or temporary basis;
  (d) inform the parent or guardian of the right to object to the proposed action at a hearing before an independent Hearing Officer, and of the manner in which to request such a hearing;
  (e) inform the parent or guardian that the child may be tested for an independent medical, psychological and educational evaluation and specify the name, address and telephone number of an appropriate local diagnostic center;
  (f) inform the parent or guardian of any organizations providing assistance with respect to placement questions;
  (g) inform the parent or guardian of the right to be represented at the hearing by legal counsel; to examine and copy the child's school records at any time during regular office hours, including any tests or reports upon which the proposed

action may be based, to present evidence, including expert medical, psychological and educational testimony; and, to confront and cross-examine any school official, employee, or agent of the school district or public department who may have evidence upon which the proposed action is based.

(iv) The hearing shall be at a time and place reasonably convenient to such parent or guardian, and shall be scheduled not sooner than twenty (20) days nor later than forty-five (45) days after the receipt of a request from the parent or guardian.

(v) The hearing shall be closed to the public unless the parent or guardian requests an open hearing.

(vi) The child and his parent or guardian are guaranteed the right to a lawyer or other representative of their own choosing. If they are unable, through financial inability, to retain counsel, the superintendent shall advise the child's parents or guardian of available voluntary legal assistance.

(vii) The decision of the Hearing Officer shall be based solely upon the evidence presented at the hearing.

(viii) The local school corporation shall bear the burden of proof as to all facts and as to the appropriateness of any placement, denial of placement or transfer.

(ix) A tape recording or other verbatim record of the hearing shall be made, and upon request shall be transcribed and made available to the parent or guardian or his representative.

(x) At a reasonable time prior to the hearing (and at any other time during regular business hours), the parent or guardian, or his counsel, shall be given access to all records of the public school system and any of its agents or employees pertaining to the child, including any tests or reports upon which the proposed action may be based.

(xi) The independent Hearing Officer shall be designated by the State Superintendent of Public Instruction and shall not be an officer, employee or agent of the local school system or the local board of education.

(xii) Costs pertaining to the hearing officer shall be paid by the local school corporation.

(xiii) The parent or guardian, or his representative, shall have the right to compel the attendance of, to confront, and to cross-examine any witness testifying for the public school system or any public employee who may have evidence upon which the proposed action may be based.

(xiv) The parent or guardian, or his representative, shall have the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(xv) Within thrity (30) days after the hearing, the Hearing Officer shall render a decision in writing. Such decision shall include findings of fact and conclusions of law and shall be sent by registered mail to the parent or guardian and his counsel.

(xvi) Appeals of any kind in reference to Rule S-1 may be made to the state board for special education appeals after procedures set out in this document are followed.

A. PROGRAMS FOR THE MULTIPLY HANDICAPPED

1. Definition

A multiply handicapped pupil is one with two or more handicapping conditions which interact and result in problems so complex that placement in programs designed for children with single handicaps will not result in significantly meaningful growth and achievement.

2. Evaluation and Placement Procedures

Determination of appropriate placement in a special education program for the multiply handicapped shall be made by a case conference committee which will consider the results of an evaluation of learning capabilities as well as all other school and health information. A written report shall be made to include recommendations regarding eligibility of the student for a special education program and admission of the student to the most appropriate special education program. If it is impossible, due to the unique complexity of a particular multiply handicapped student's condition, to satisfactorily assess his problems and needs and arrive at a conclusion regarding placement, he may be assigned by the case conference committee to a diagnostic-teaching center for intensive continuing evaluation.

The case conference committee shall be responsible for the determination of whether additional medical, psychoneurological, learning capability or other type of evaluation is needed prior to making a decision on eligibility of the student to enter a special education program.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review
A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

    a. Retention in the program.

    b. Transfer to a different level of special education programming.

    c. Transfer to a regular school program.

    d. Transfer to an appropriate public or private resource.

4. Diagnostic-Teaching Center
Seriously handicapped students may be assigned to the Diagnostic-Teaching Center for such periods of time as may be necessary to assess the learning strengths and weaknesses of individual students and formulated a conclusion as to the most appropriate program placement. Multiply handicapped students are then placed in the most appropriate school program or necessary referral to other agencies and follow-up action is made. The Diagnostic-Teaching Center shall be staffed with a professionally certificated special education teacher with training in diagnosis and remediation of students with educational handicaps and have available consultative services of appropriate specialists.

The caseload of the Diagnostic-Teaching Center shall be limited to allow the personnel to meet the individual needs of each student enrolled.

5. Classes for the Multiply Handicapped
Class size shall be no greater than a maximum of eight students. Exceptions to this regulation may be requested in writing to the Division of Special Education. An aide shall be employed if the nature and needs of the individual students in the program for the multiply handicapped so warrant.

B. PROGRAMS FOR THE PHYSICALLY HANDICAPPED
1. Definition
A pupil is physically handicapped if he has an orthopedic or other health impairing problem which a licensed physician in his diagnosis finds to be a serious impairment of the child's locomotion or motor functions leading to an inability to function in the regular school program or a need for greater protection than the regular school program provides.

2. Evaluation and Placement Procedures
Determination of appropriate placement in a special education program for the physically handicapped shall be made by a case conference committee which will consider the results of a medical report and an evaluation of learning capabilities as well as other school information. The written report shall be made to include recommendations regarding eligibility of the student for a special education program and admission of the student to the most optimum type of special services warranted by the student's needs.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review
A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

   a. Retention in the program.

   b. Transfer to a different level of special education programming.

   c. Transfer to a regular school program.

   d. Transfer to an appropriate public or private resource.

4. Classes for the Physically Handicapped
The following types of classes may be approved:

Nursery	Kindergarten	Primary
Ages: 3-4	Ages: 5-6	Ages: 7-9
Intermediate	Junior High	Senior High
Ages: 10-12	Ages: 13-14	Ages: 15-21

Combinations of the above may be approved provided that a special education program shall be available at both the elementary level and secondary level. The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled. An aide shall be employed if the nature and needs of the individual students in a class warrant. The special class will also be used as a resource room in that students enrolled will be integrated in the regular classes as much as their condition permits. The special class teacher of the physically handicapped will act as consultant for those regular class teachers who have physically handicapped pupils enrolled in their classes.

5. Alternate Programs for the Physically Handicapped
Resource rooms and other alternate programs may be operated provided the Division of Special Education approves them. The original request shall include a documented program description which shall be submitted to the Division of Special Education sixty days prior to the initiation of the program. The description shall include a program rationale, the procedure for selection and placement of students, and the plan for in-service education of teachers assigned to work in the program, the organizational plan and general curriculum content, and a detailed system for the continuing evaluation of each student's progress. Program applications for succeeding years shall be submitted in accordance with the provisions of Section III with accompanying program descriptions to include only annual changes made since the original program description was submitted.

C. PROGRAMS FOR THE VISUALLY HANDICAPPED

1. Definition
A visually handicapped pupil is one who meets one of the following descriptions:

The Blind Pupil - a person is blind who comes within either of the following descriptions:

His visual loss is so severe that, for educational purposes, vision cannot be used as a major channel of learning.

His visual acuity is 20/200 or less in the better eye, after correction, or his peripheral field is so contracted that the widest diameter of such field subtends an angular distance no greater than twenty degrees. Pupils with this degree of physical defect will be educated in the local school corporations of Indiana unless one of the following conditions exist: 1) the parent or legal guardian of a blind child expresses preference that the child attend the Indiana School for the Blind; 2) the comprehensive plan for serving blind children in the resident school corporation or joint service and supply cooperative is not approved by the Department of Public Instruction because of inability to provide a comprehensive program according to the "Guidelines for Comprehensive Planning", 3) it is the considered opinion of the attending physician, the parents, the school administration and administration of the Indiana School for the Blind, that the child should be placed in the Indiana School for the Blind.

The Partially Seeing Pupil - a person is partially seeing who comes within either of the following descriptions: His vision deviates from the normal to such an extent that, in the combined opinion of a qualified educator and either physician or optometrist, he can benefit from the special education facilities provided partially seeing pupils.

His visual acuity is 20/70 or less in the better eye after correction, and he is able to use vision as the principal means of education.

2. Evaluation and Placement Procedures
Determination of appropriate placement in a special education program for the visually handicapped shall be made by a case conference committee which will consider the results of a medical report and an evaluation of learning capabilities as well as other school information. The written report shall be made to include recommendations regarding eligibility of the pupil for a special education program and admission of the pupil to the optimum type of special services warranted by the pupil's needs.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review
A case review of each pupil shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

   a. Retention of the program.

   b. Transfer to a different level of special education programming.

   c. Transfer to a regular school program.

   d. Transfer to an appropriate public or private resource.

4. Itinerant Teacher of the Visually Handicapped
The itinerant teacher is a certificated teacher of the blind or partially seeing who provides special instruction and materials regularly as prescribed to blind and

partially seeing pupils who are assigned to regular classrooms throughout the school corporation(s).

5. Resource Teacher of the Visually Handicapped
The resource teacher provides intensive instruction from a resource room or center to blind and partially seeing pupils on a prescribed part-time basis. The pupils are integrated from the resource room into regular classes and activities.

6. Classes for the Visually Handicapped
The following types of classes may be approved:

Nursery Ages: 3-4	Kindergarten Ages: 5-6	Primary Ages: 7-9
Intermediate Ages: 10-12	Junior High Ages: 13-14	Senior High Ages: 15-21

Combinations of the above may be approved. The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled.

D. PROGRAMS FOR THE HEARING IMPAIRED

1. Definition
Hearing impaired refers to pupils who have been termed deaf or hard of hearing. These pupils are those in whom the condition is medically irreversible or requires prolonged medical care.

Students with hearing impairments are those who require a variety of special education services, placement, and programming determined by the age of onset of the hearing loss, the nature and/or degree of hearing loss, and the ability of the person to function within the group structure.

Definition of terms

The Deaf Pupil - a deaf pupil is one in whom the sense of hearing is non-functional for the ordinary purposes of life. This general group is made up of two distinct classes based entirely on the time of loss of hearing.

a. The congenitally deaf - those who were born deaf.

b. The adventitiously deaf - those who were born with normal hearing but in whom the sense of hearing becomes non-functional later through illness or accident.

Pupils with this degree of physical defect will be educated in the local school corporations of Indiana unless one of the following conditions exist: 1) the parent or legal guardian of a deaf child expresses preference that the child attend the Indiana School for the Deaf; 2) the comprehensive plan for serving deaf children in the resident school corporation or joint service and supply cooperative is not approved by the Department of Public Instruction because of inability to provide a comprehensive program according to the "Guidelines for Comprehensive Planning"; 3) it is the considered opinion of the attending physician, the parents, the school administration and administration of the Indiana School for the Deaf that the child should be placed in the Indiana School for the Deaf.

The Hard of Hearing Pupil - a pupil in whom the sense of hearing, although defective, is functional with or without a hearing aid.

2. Evaluation and Placement Procedures
The proper placement of the hearing impaired pupil is the responsibility of the local school administrators. The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making the proper recommendations.

When assistance in placement is necessary, the Division of Special Education will provide a consultation team.

Determination of appropriate placement in a special education program for the hearing impaired shall be made upon the basis of a written report which correlates information from the following:

a. An audiclogical evaluation by a clinical audiologist licensed by the State Board of Examiners on Speech Pathology and Audiology.

b. A general medical examination.

c. An otological examination by an otologist.

d. An evaluation of learning capabilities.

Determination of appropriate placement shall be made by a case conference committee which will consider the results of the examinations, as well as other school information. A written report shall be made to include recommendations regarding eligibility of the child for a special education program and the most appropriate type of program.

3. Annual Case Review
A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

   a. Retention in the program.

   b. Transfer to a different level of special education programming.

   c. Transfer to a regular school program.

   d. Transfer to an appropriate public or private resource.

4. Programming in Early Education for the Hearing Impaired
Approval may be given for the provision of early education programs for hearing impaired children between the ages of six months and five years upon receipt of a documented program description by the Division of Special Education. The program shall be submitted to the Division of Special Education sixty days prior to the anticipated beginning of the program. Applications for succeeding years shall be submitted in accordance with the provisions of Section III with accompanying program descriptions to include only such annual changes as may be made since the program was originated. Information to be included in the program description shall be as follows:

   a. The program rationale.

   b. The procedures for selection of the pupils.

   c. The organizational plan and general curriculum content of the instructional program for the pupils.

   d. The plan for administrative supervision.

   e. The system for the evaluation of progress of the pupils.

5. Classes for the Hearing Impaired
The following types of classes may be approved:

Infant	Ages: 6 months - 2
Preschool	Ages: 2-5
Primary	Ages: 6-7
Primary-Intermediate	Ages: 8-10
Intermediate	Ages: 11-12
Junior High	Ages: 13-15
Senior	Ages: 16-21

The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled.

6. Alternate Programs for the Hearing Impaired
Approval may be given for the operation of a variety of services which are designed to meet the individual needs of the hearing impaired. In addition to full-time special classes, the following alternate programs may be approved:

a. Special Consultation and Itinerant Instruction
Special consultation programs may be established to serve the mildly hearing impaired pupils whose special needs may be met by remaining in regular classrooms when special periodic instruction of an itinerant nature is provided, and when special consultation is provided their teachers, counselors, and supervisors. Such consultation is related to special seating arrangements, management of auditory amplification instruments, speech-reading instruction, and special sequences of counseling and guidance. Consultation is provided by professionally certificated teachers of the deaf, and speech, hearing, and language clinicians.

b. Resource Room Programming
Pupils remain in the regular class for the major portion of the day and are scheduled into the Resource Room for specialized work which may include language development, speech-reading, and individualized or small group developmental and remedial instruction in the basic subjects.

c. Cooperative Part-Time Programming

Pupils are assigned to a part-time special education class for a major portion of their instruction. Pupils are individually programmed into regular classes and activities as each pupil demonstrates potentially for successful placement. No more than eight pupils may be assigned to a cooperative part-time special class for any given period. The special education teacher shall be responsible for maintaining a close working liaison with teachers of regular classes and activity programs.

E. PROGRAMS FOR THE EMOTIONALLY DISTURBED

1. Definition

An emotionally disturbed child, for purposes of special education, is one who after receiving supportive and counseling services available to all students designed to improve learning and adjustment in the regular classroom, is chronically unable to make constructive use of his school experience, as manifested by an inability to develop, socially and emotionally, and learn at the same rate as his classmates and who requires the provision of special educational services designed to promote his educational, social, and emotional growth and development.

This definition does not include or intend to imply an obligation to provide psychiatric treatment or social welfare programs to all children with problems, nor does it include students whose problems are primarily:

a. Mental retardation.

b. A temporarily emotionally disturbed child due to some identifiable external crisis situation.

c. A condition which requires residential hospital treatment.

d. Severe physical or sensory handicaps.

e. Ordinary classroom behavior problems and social problems such as delinquency and drug abuse.

The determination of who is an emotionally disturbed child, as defined for special education purposes, shall be made by one, or more, of the following:

a. A physician with an unlimited license to practice medicine who is trained in the specialty of psychiatry.

b. A clinical psychologist who is duly licensed by the Indiana State Board of Examiners in Psychology.

c. A school psychologist who is duly certificated.

2. Evaluation and Placement Procedures

Determination of appropriate placement in a special education program for the emotionally disturbed shall be made upon the basis of a written report of an individual evaluation by one, or more, of the following:

a. A physician with an unlimited license to practice medicine who is trained in the specialty of psychiatry.

b. A clinical psychologist who is duly licensed by the Indiana State Board of Examiners in Psychology.

c. A school psychologist who is duly certificated.

The report shall include information pertaining to the nature and extent of such problems as perceptual difficulties, language and communication deficits, related physical impairments, psychological, emotional, and social maladjustment, and other factors affecting the learning of the student. When available an appropriate consultant in the area of the emotionally disturbed may contribute to such report. Social casework data and other evaluations as needed shall be utilized.

Determination of the appropriate placement in a special education program for the emotionally disturbed shall be made by a case conference committee which will consider the results of an evaluation of learning capabilities as well as other school and health information. A written report shall be made by this committee which includes recommendations regarding eligibility of the pupil for a special education program and admission of the pupil to the most appropriate program.

The case conference committee shall be responsible for the determination of whether additional medical evaluation of a psychoneurological nature is needed prior to making a decision on eligibility of the pupil and a recommendation as to the most appropriate of the types of programs described in Part E 4-7 of this Section.

The director of special education shall take primary responsibility for coordinating results of necessary evaluation in such a matter as to aid the case conference committee in making proper recommendations.

3. Annual Case Review
A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

   a. Retention in the program.

   b. Transfer to a different level of special education programming.

   c. Transfer to a regular school program.

   d. Transfer to an appropriate public or private resource.

4. Special Consultation
Special consultation programs may be established to serve emotionally disturbed students whose special needs may be met by remaining in regular classrooms when special consultation is provided their teachers and supervisors. Such consultation is related to the development and utilization of special, individualized sequences of instruction, behavioral management, crisis counseling and guidance. The caseload of each full-time special consultant shall be no more than forty students.

5. Learning Resources and Tutoring Center
Pupils remain in the regular class for the major portion of the day and are scheduled into the learning resources and tutoring center for one or more periods of tutorial or small group instruction given by a professionally certificated teacher of the emotionally disturbed. The caseload of the resource teacher may vary from a minimum of eight who are severely handicapped to a maximum of forty, depending upon the type of instructional service needed.

6. Part-Time Special Class
Students may be assigned to a part-time special education class for a major portion of their instruction. Students are individually programmed into regular classes and activities as each student demonstrates the potential for successful performance. Class size may range from a minimum of four to a maximum of twelve students per period depending upon the degrees of severity of the students involved. The special education teacher shall be responsible for maintaining a close working liaison with teachers of regular classes and activity programs.

7. Full-Time Special Class

The following types of classes may be approved:

Nursery Special	Kindergarten Special	Primary Special
Ages: 3-4	Ages: 5-6	Ages: 7-9
Intermediate	Junior High	Senior High
Ages: 10-12	Ages: 13-14	Ages: 15-21

Combinations of these classes may be approved by the Division of Special Education. The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled. Composition of special classes with regard to grouping types of emotionally disturbed students shall be determined by the behavioral and learning compatibility of the students.

F. PROGRAMS FOR THE NEUROLOGICALLY IMPAIRED/LEARNING DISABLED

1. Definition

A student with neurological impairments/learning disabilities exhibits severe specific defects in perceptual, integrative or expressive processes which severely impair learning efficiency. Neurological impairments/learning disabilities include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction , dyslexia and developmental aphasia and may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. They do not include learning problems which are due primarily to visual, hearing, or motor handicaps, to mental retardation, emotional disturbance, or to environmental disadvantages. Children enrolled in programs for the neurologically impaired/learning disabled shall be those who are chronic failures in the regular classroom setting and are seriously deficient in educational skills. Reimbursement of enrollment in such programs shall be limited to a maximum of 1% of the total enrollment of any school corporation.

2. Evaluation and Placement Procedures

Establishment of pupil eligibility for services in a special education program for students with neurological impairments/learning disabilities shall be made upon the basis of a written report of an individual evaluation which shall be performed by a physician with an unlimited license to practice medicine and who is trained in the specialty of neurology, pediatrics, internal medicine or psychiatry.

Determination of appropriate placement in a special education program for students with a neurological impairment/learning disability shall be made by a case conference committee which will consider the results of a psychological evaluation as well as other school and health information. A written report shall be made by this committee which includes recommendations regarding eligibility of the pupil for a special education program and admission of the pupil to the most appropriate program.

The case conference committee shall be responsible for the determination of whether additional medical evaluation of a psycho-neurological nature is needed prior to making a decision on eligibility of the pupil and a recommendation as to the most appropriate of the types of programs described in Part E 4-7 of this section.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review
A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

    a. Retention in the program.

    b. Transfer to a different level of special education programming.

    c. Transfer to a regular school program.

    d. Transfer to an appropriate public or private resource.

4. Special Consultation
Special consultation programs may be established to serve neurologically impaired/learning disabled students whose special needs may be met by remaining in regular classrooms when special consultation is provided their teachers and supervisors. Such consultation is related to the development and utilization of special, indivudualized sequences of instruction, behavioral management, speech and language development, crisis counseling and guidance.

The caseload of each full-time special consultant shall be no more than forty students.

5. Learning Resources and Tutoring Center
Pupils remain in the regular class for the major portion of the day and are scheduled into the Learning Resources and Tutoring Center for one or more periods of tutorial or small group instruction given by a professionally certificated teacher. The caseload of the resource teacher may vary from a minimum of eight who are severely handicapped to a maximum of forty, depending upon the type of instructional service needed.

6. Part-Time Special Class
Students may be assigned to a part-time special education class for a major portion of their instruction. Students are individually programmed into regular classes and activities as each student demonstrates the potential for successful performance. Class size may range from a minimum of four to a maximum of twelve students per period depending upon the degree of severity of the students involved. The special education teacher shall be responsible for maintaining a close working liaison with teachers of regular classes and activity programs.

7. Full-Time Special Class
The following types of classes may be approved:

Nursery School Ages: 3-4	Kindergarten Special Ages: 5-6	Primary Special Ages: 7-9
Intermediate Ages: 10-12	Junior High Ages: 13-14	Senior High Ages: 15-21

Combinations of these classes may be approved by the Division of Special Education. The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled. Composition of special classes with regard to grouping types of students with learning disabilities shall be determined by the behavioral and learning compatibility of the students.

G. PROGRAMS FOR STUDENTS WITH COMMUNICATION HANDICAPS

1. Definition
Communication disorders may include any of the following:

a. Articulation: This group includes all the speech deviations based primarily on incorrect production of speech sounds and may result from organic conditions or be non-organic, or functional, in nature. A person who omits sounds in words, substitutes one sound for another in words, and/or distorts speech sounds within a word, exhibits an articulation problem.

b. Fluency: This group includes the speech deviations commonly referred to as stuttering and those which involve an abnormal rate of speech.

c. Voice: This group of disorders is made up of three major types having to do primarily with the sound of the voice: pitch, loudness, and quality.

d. Language: A child who experiences difficulties in the use and/or comprehension of linguistic symbols may require the services of the speech and language clinician.

2. Evaluation and Placement Procedures
Determination of appropriate placement in a program of communication disorders shall be determined on the basis of an evaluation by a speech, hearing, and/or language clinician certificated in the State of Indiana and the appropriate medical information, educational information and learning capability evaluation. All students who have symptoms of acoustic, voice, neurological, and/or physiological conditions which may be related to the communication disorder shall have an evaluation by a physician. A physician's statement shall be on file with the school corporation describing the medical need of these students and the consequent limitations to be imposed upon their training. After the decision has been made to place a pupil in speech, hearing, and/or language therapy, the parent or legal guardian of the pupil involved in that decision may appeal the decision as outlined in Section II.

3. Caseload
The caseload of each speech, hearing, and/or language clinician shall not exceed one hundred at any given time and shall be determined by the needs of the students, the number of schools, and the type of scheduling. Under intensive (block) or resource room scheduling, the caseload at any given time shall be reduced from the one hundred maximum to allow for the intensive nature of the program.

4. Types of Programs
The following types of programs for students with communication handicaps may be approved:

a. Intermittent scheduling: Students shall be scheduled for at least two therapy sessions per week.

b. Flexible scheduling: Students shall be scheduled more frequently than the minimum of two therapy sessions per week, preferably on an individual basis, and for the number of sessions and amount of time necessary to reach specific objectives.

c. Intensive (block) scheduling: Schools shall be scheduled for certain segments of the year, the length and number of these segments for each school to be determined on the basis of number students needing therapy, the needs of the students, and the length of the school year. Students shall be scheduled intensively within these segments.

d. Combination scheduling: Any combination of the above types of schedules which meets the needs of students with communication disorders may be approved.

e. Resource room scheduling: Approval may be given for the provision of intensive therapy with students with communication disorders in a resource room. Students may be assigned to regular or special classroom and are scheduled into the resource room for individual or small group therapy.

Types of scheduling shall be subject to the approval of the immediate supervisor.

H. PROGRAMS FOR THE EDUCABLE MENTALLY RETARDED

1. Definition

The general rate of mental development of the educable mentally retarded pupil is approximately two-thirds that of a pupil of average intelligence. Stated in terms of academic outcomes, the educable student has the capability of becoming functionally literate. Vocationally, persons with educable intellect have demonstrated the ability to participate successfully in the competitive work market without requiring intensive and constant supervision. Given an individual intelligence test such as the Stanford-Binet Intelligence Test, the educable mentally retarded person will usually earn a quotient within the 60-75 range.

2. Evaluation and Placement Procedures

Determination of appropriate placement in a special education program for the educable mentally retarded shall not be determined by IQ alone, but shall be determined by a case conference committee which will consider the results of a psychological evaluation as well as other school and health information. A written report shall be made to include recommendations regarding eligibility of the student for a special education program and admission of the student to the most appropriate program.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review
   A case review of each pupil shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

   a. Retention in the program.

   b. Transfer to a different level of special education programming.

   c. Transfer to a regular school program.

   d. Transfer to an appropriate public or private resource.

4. Special Programs for the Educable Mentally Retarded
   Special programs may be operated upon approval of the Division of Special Education. The original request shall include a documented program description which shall be submitted to the Division of Special Education sixty days prior to the initiation of the program. The description shall include a program rationale, the procedures for selection and placement of students, the plan for in-service education of teachers assigned to work in the program, the organizational plan and general curriculum content, and a detailed system for the continuing evaluation of the student's progress. Program applications for succeeding years shall be submitted in accordance with the provisions of Section III, with accompanying program descriptions to include only annual changes made since the original program description was submitted. Alternate programs may take one or more of the following forms:

   a. Special Consultation: Special consultation programs may be established to serve educable mentally retarded students whose special learning needs may be met by remaining in regular classrooms when special consultation is related to the development of special, individualized sequences of instruction, management, counseling and guidance. Consultation is provided by professionally certificated special education teachers. The caseload of each special consultant shall be no more than forty students.

b. Learning Resources and Tutoring Center: Students will remain in the regular class for the major portion of the day and be scheduled into a Learning Resources and Tutoring Center for one or more periods for tutorial or small group instruction given by a special education teacher. No more than eight students may be scheduled during any individual period. No more than a total of forty students may be assigned to a full-time teacher. Part-time special teachers may be employed to serve proportionate numbers of educable mentally retarded students.

c. Part-time Special Class: Students may be assigned to a part-time special education class for a major proportion of their instruction. A student is individually programmed into regular classes and activities as he demonstrates the potential for successful placement. No more than eighteen students may be assigned to a part-time special class for any given period. No more than a total of thirty-six students may be assigned to a teacher. The special education teacher shall be responsible for maintaining a close working liaison with teachers of regular classes and activity programs.

5. Classes for the Educable Mentally Retarded
The following types of classes may be approved:

Nursery Special
Ages: 3-4

Kindergarten Special
Ages: 5-6

Primary Special
Ages: 7-9

Intermediate Special
Ages: 10-12

Junior High School
Ages: 13-14

Senior High Work Oriented
Ages: 15-21

Combinations of the above may be approved by the Division of Special Education. The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled.

I. SPECIAL CLASSES FOR THE TRAINABLE MENTALLY RETARDED

1. Definition

Approximately three out of every one thousand school age pupils have a level of intellectual functioning which precludes an ability to become literate, yet, who can maintain a level of language proficiency and self-care to function semi-independently in society. Most trainable mentally retarded persons ultimately function in a sheltered or supervised environment requiring little decision-making or diversification. The trainable mentally retarded person, given an individual intelligence test, such as the Stanford-Binet Intelligence Scale, will usually earn a quotient in the range of 35-60.

2. Evaluation and Placement Procedures

Determination of appropriate placement in a special education program for the trainable mentally retarded shall not be determined by IQ alone, but shall be made by a case conference committee which will consider the results of a psychological evaluation as well as other school and health information. A written report shall be made to include recommendations regarding eligibility of the students for a special education program and admission of the student to the most appropriate program.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review

A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

a. Retention in the program.

b. Transfer to a different level of special education.

c. Transfer to a regular school program.

d. Transfer to an appropriate public or private resource.

4. Types of Classes

The following types of classes may be approved:

Early Education Development Center	Ages:	3-5
Primary	Ages:	6-9
Intermediate	Ages:	10-13
Advanced	Ages:	14-17
Occupational Training	Ages:	18-21

A chronological age range of no more than five years may be included in a special class. Exceptions to this rule may be requested upon written application to the Division of Special Education.

The special class shall be limited in size to allow the teacher to meet the individualized needs of each student enrolled.

5. Facilities for Classes

Classes may be housed in buildings outside a regular school facility, but shall meet minimum standards as approved by the Commission on General Education.

J. SPECIAL CLASSES FOR THE SEVERELY-PROFOUNDLY MENTALLY RETARDED

1. Definition

The general capability of mental development of the severely profoundly retarded pupil is that he can learn to communicate, can learn elemental health habits, and can profit from systematic habit training. It may be possible for this group of retarded to hold down a closely supervised position in a sheltered work environment while others in this category will not be able to hold down any supervised position but develop limited speech and motor skills. The severely-profoundly mentally retarded person given an individual intelligence test such as the Stanford Binet Intelligence Scale will usually earn a quotient of below the 35 level.

2. Evaluation and Placement Procedures

Determination of appropriate placement in a special education program for the severely-profoundly mentally retarded shall not be determined by IQ alone, but shall be made by a case conference committee which will consider the results of psychological evaluation as well as other school and health information. A written report shall be made to include recommendations regarding eligibility of the student for a special program and admission of the student to the most appropriate program.

The director of special education shall take primary responsibility for coordinating results of necessary evaluations in such a manner as to aid the case conference committee in making proper recommendations.

3. Annual Case Review

A case review of each student shall be made each year by a case conference committee. The committee shall determine what, if any, additional data are required in order to assess the student's current and continuing needs. The committee shall prepare a report recommending one of the following:

   a. Retention in the program.

   b. Transfer to a different level of special education programming.

   c. Transfer to a regular school program.

   d. Transfer to an appropriate public or private resource.

4. Classes for the Severely-Profoundly Mentally Retarded

The following types of classes may be approved:

Early Education Development Center	Ages: 3-5
Primary	Ages: 6-9
Intermediate	Ages: 10-13
Advanced	Ages: 14-17
Occupational and/or Other Intensive Training	Ages: 18-21

A chronological age range of no more than five years may be included in a special class. Exceptions to this rule may be requested upon written application to the Division of Special Education.

The special class shall be limited in size to allow the teacher to meet the individual needs of each student enrolled.

5. Facilities for Classes

Classes may be housed in buildings outside a regular school facility but shall meet minimum standards as approved by the Commission on General Education.

K. ADMINISTRATION AND SUPERVISION OF SPECIAL EDUCATION PROGRAMS

1. Director of Special Education

A director of special education has responsibilities as the superintendent may direct. A school corporation, or two or more school corporations operating under a joint agreement program, which employs five to nine full-time special education teachers (not including home teachers), therapists, and/or clinicians in two or more areas of special education, approved by the Division of Special Education is eligible for reimbursement for a half-time director of special education. A school corporation, or two or more school corporations operating under a joint agreement program, which employs ten or more full-time special education teachers, therapists, and/or clinicians approved by the Division of Special Education is eligible for reimbursement for a full-time director of special education.

A school corporation, or two or more school corporations operating under a joint agreement program, which employs less than five full-time special education teachers, therapists, and/or clinicians is eligible for a half-time director for one year provided that the school corporation furnishes evidence that by the next year the school corporation will employ a total of five or more full-time teachers, therapists, and/or clinicians in two or more special education areas.

2. Supervisor of Special Education

A supervisor, working under a director of special education, has supervisory responsibilities for an area of exceptionality in a total program of special education and his role includes duties and responsibilities pertinent to this area as assigned by the director. A school corporation, or two or more school corporations operating under a joint agreement program, which has a certificated director of special education and which employs five to nine approved full-time special education teachers (not including home teachers), therapists, and/or clinicians in any one area of exceptionality is eligible for a half-time supervisor in that one area. A school corporation, of two or more school corporations operating under a joint agreement, which has a certified director of special education and which employs ten or more approved full-time special class teachers or therapists and/or clinicians in any one area of exceptionality is eligible for a full-time supervisor of special education in that area. Such full or part-time supervisor must have had a minimum of three years of teaching experience in the area of supervision and be professionally certificated in that area of education.

Future approval of supervisors will depend upon their meeting state certification patterns as promulgated by the Commission on Teacher Education and Certification.

L. PROGRAMS OF HOMEBOUND INSTRUCTION AND SCHOOL-HOME TELEPHONE

Homebound and/or school-home telephone programs provide instruction to students unable to attend school because of physical handicaps or special health problems. Homebound teaching should be initiated only after all other possibilities have been exhausted, with the goal of providing a public education for all children, regardless of the physical limitations.

An evaluation by a physician is required. The evaluation by the physician must indicate that the child has an illness or injury requiring hospitalization or homebound care as part of medical treatment.

A psychological evaluation is required for those students whose medical diagnosis is cerebral palsy, epilepsy, brain injury, hydrocephalus and other conditions which may affect learning. This evaluation shall include an investigation of mental, physical, social, and emotional factors and an assessment in school subjects.

In cases of emotional disturbances, the school corporation shall submit a statement with Form 23-H that out-patient psychiatric treatment will be given during the period of homebound instruction.

To be eligible for homebound instruction, evidence shall be on file with the school corporation having jurisdiction over said pupil, that the pupil will be homebound for at least eight weeks, or that a period of homebound instruction for less than eight weeks at the close of the school year will enable the pupil to complete the regular school work. Students who are enrolled in approved special education programs shall be eligible for homebound instruction providing the teacher is fully certificated to teach pupils with this disability.

If homebound instruction is approved, it may be continued through the summer to complete a semester to meet promotion requirements.

The number of homebound pupils per teacher shall not exceed five at any one time. Approval for homebound teacher instruction is limited to one hour per day, five days per week, twenty hours per month for pupils in elementary schools. Approval for homebound instruction at the junior high and secondary level is limited to one hour per day, five days per week, twenty hours per month per each subject in which the pupil is enrolled.

School-home telephone instruction may be provided for intermediate through high school students who meet the requirements for homebound pupils as set forth in these rules.

School-home telephone and homebound instruction may be offered concurrently.

Reimbursement for approved cost of homebound instruction shall be retroactive to the actual beginning of such instruction.

M. PSYCHOLOGICAL SERVICES

The psychological services of relevance here are those supportive to the special education program such as, but not limited to, those described under "Evaluation and Placement Procedures" as performed by certificated school psychologists and/or psychometrists.

Approval must be given for psychological services (1) obtained by the full or part-time employment of school psychologists and/or psychometrists or (2) obtained on a contract basis.

The following standards must be met where programs of contracted services are used:

1. A written contract must exist between those providing service and the school corporation being served.
   a. The basis for payment in any contracted agreement must be set in units of time (hours, days, weeks, etc.) and those units must be spread throughout the school year by some general schedule which would be open to modification according to need.
   b. The contract may be made for services to be provided within the school environment and/or in a clinic/center.
2. Any clinic or center providing services must have a certificated school psychologist and/or psychometrist on its staff who will assume responsibility for the center's/clinic's involvement with school corporations.

N. RELATED SCHOOL SERVICES

School health, counseling and guidance, and social work services are appropriate to complement psychological services.

O. OCCUPATIONAL THERAPY

Occupational therapy refers to that service provided, under the direction of a physician, with the intent of strengthening the person's abilities in light of future occupational opportunities.

P. PHYSICAL THERAPY
Physical therapy refers to that service provided, under the direction of a physician, with the intent of training and strengthening the person's locomotive process by a physical and/or mechanical means.

Q. SPECIAL TRANSPORTATION
Special transportation refers to any special or additional mode or means of transporting handicapped students to and from school which the school directly provides or contracts for with public or private agencies or persons.

Transportation, other than regular bus routes, may be approved for the following types of programs conducted within the school corporation or within the environs of a cooperative special education program operated by a joint school service and supply program:

1. Special programs for handicapped pupils as defined in Section II of this rule.
2. Handicapped pupils who attend special classes outside their normal school attendance area.
3. Physically handicapped pupils or those pupils with special health problems who are able to attend regular classes if special transportation is provided.
4. Transportation of handicapped students within the school corporation or to another school corporation may be made.
5. Handicapped pupils legally transferred to special education programs operated by school corporations, joint service and supply programs or joint schools outside the boundaries of the resident school corporation.

Only one round trip each day the pupil is in school shall be approved. Information concerning the transporting party and the transportation contract shall be submitted on Form 23-TR. The cost of transportation shall be submitted on Form 24. The reimbursement for all transporation claims shall be consistent with the reimbursement formula established by the Commission on General Education.

R. SPECIAL EDUCATION AIDES
The special education aide would assist the teacher certificated in the appropriate area of special education in the preparation of instructional materials, in setting up and

operating of audio-visual equipment, helping with room displays, attendance, in music, physical education, etc. Under the direction and supervision of the teacher, the aide will work directly with the student in areas that relate to their personal, social and learning needs.

The school corporation must provide each aide with intensive pre-service and in-service training which meets the following conditions:

1. The training curriculum must be differentiated to meet the special needs and characteristics of the particular type and level of handicapped children being served.

2. The training curriculum must be developed so as to bring about enhancement of the communicative and social interacting skills of the special education aide and to increase his sensitivity to the special needs of the handicapped.

3. The training curriculum must create an awareness of the ethical responsibility involved in working in schools, and an awareness of maintaining the confidentiality of personal information about any child.

The school corporation must provide an orientation period that would bring together the supervising teacher, the special education aide and the supervisor to clarify the specific working relationships, roles and functions of the supervising teacher, the special education aide and the supervisors.

Written application from the school corporation proposing to use special education aides must be approved by the Division of Special Education. The application from the local school corporation shall include guidelines for selection and training, intended use and job descriptions of each special education aide.

When in terms of the information included in the written application, it appears that the utilization of special education aides will enhance the education of handicapped children, the Division of Special Education may, until July 1, 1975, approve for partial reimbursement as allowed in the law. (I.C. 20-1-6-3). The July, 1975, deadline for the utilization of the special education aide may be considered for extension during the 1974-75 school year by the Commission on General Education and the State Superintendent of Public Instruction if positive evidence of the efficacy of this program is obtained on a statewide basis.

SECTION III - APPLICATIONS FOR CLASSES AND PROGRAMS

A. Application for a new special class or program shall be made to the Division of Special Education on Form 23 and approval must be granted before the class or program starts. Those school corporations employing a certificated director of special education shall report programs on Form 23-1 and indicate in writing all new programs before the program begins.

B. Applications to continue special classes and programs which have been previously approved shall be made on appropriate Form 23 by October 15 for a full-year program, and by February 15 for a half-year program. Pre-approvals on Form 23 will be accepted July 15 for programs with fully certificated special education teachers. A corporation will be notified of approval or disapproval of all requests.

C. Application for approval of a psychological services program shall be made on Form 23 P (Revised). This application shall include a description of the proposed plan for psychological services and, in the case of contracted services, a copy of the contract shall be submitted with Form 23 P (Revised).

D. Homebound instruction may be approved any time during the year. Application is made on Form 23-H. Homebound instruction during the summer may be approved, but any instruction continuing after the end of the school year shall be requested on a new Form 23-H.

E. School corporations employing approved directors of special education shall use the following forms for approval of programs:

1. Form 23-A shall be used to apply for approval for a director of special education. This application shall include a description of the proposed plan for the administration and supervision of special education classes or programs.
2. Applications for homebound instruction shall be made on Form 23-H-1. Form 23-H-1 shall be submitted to the Division of Special Education by December 15. A supplemental Form 23-H-1 shall be submitted by April 15 and will include information on additional students added to the homebound program who were not included on the first report.
3. Applications for special class programs shall be made on Form 23-1 which shall be submitted by October 15.

A supplemental Form 23-1 shall be submitted by April 15 which will include information on students added to the program since the first report was submitted.

SECTION IV - FACILITIES

Facilities for all special education programs shall meet standards as approved by the Commission on General Education. Adequate (and appropriate) equipment shall be provided for all programs.

SECTION V - CERTIFICATION

A school corporation may be eligible for reimbursement for special education programs where the teachers, therapists, clinicians, school psychologists and psychometrists, directors and supervisors hold certification appropriate for the special work. Exceptions are listed below:

> The home bound program is a program of academic instruction which is taught primarily by regular classroom teachers. Teacher requirements are the same as those for teaching in regular classes (i.e., a valid Indiana certificate covering the grade, area, or subject to be taught).
>
> Graduate students may be approved if they are in training working toward certification in school psychology or school psychometry at an approved training institution provided that the training institution declares the student ready for internship experience and provided that the school corporation can provide supervision by a certificated school psychologist or school psychometrist who has had not less than three years experience and sixty hours of graduate education.

SECTION VI - REIMBURSEMENT

Reimbursement will be granted only to school corporations which have approved programs and have filed Form DPI-SE-24 "Report of Special Education Programs". Form DPI-SE-24 must be filed within ten days after close of classes or by June 15 each year, whichever is later.

A. Reimbursable Costs

Reimbursement shall be as follows:

1. 50% of the cost or salaries of approved special education teachers, psychological service personnel, special administrators, special supervisors, and special education aides.

2. 70% of the salaries of approved speech, hearing, and/or language clinicians, including the salary for time spent in hearing screening; physical therapists, and occupational therapists.

3. 80% of approved special transportation, homebound instruction and home-school telephone.

B. Part-Time Personnel

A school corporation shall be reimbursed only for the time spent by special education personnel in approved programs and classes.

Rules of Special Education

State of Iowa ○ Department of Public Instruction

DIVISION V

SERVICES AND PROGRAM MANAGEMENT

12.17(281) Programs and Procedures Required. Consistent with provisions of a working environment which will encourage efficient and effective utilization of the professional abilities and time of special educators and the integration of special education programs and services with the instructional and other programs of the school district as a whole, the area education agency and school district shall establish and maintain procedures to provide the programs and services identified herein.

12.18(281) Identification, Assessment and Evaluation. Each area education agency, in conjunction with each school district, shall establish and maintain an ongoing identification, assessment and diagnostic program to insure early identification of and appropriate service for children requiring special education. The program shall include:

12.18 (1) Screening for pupils who may require special education which is consistent with the following:

a. The population to be screened and the screening model(s) used shall be specified.

b. Qualified personnel shall conduct or supervise screening programs. Paraprofessional personnel, after receiving appropriate training, may assist in screening under supervision of a qualified professional.

c. Measures shall be included to secure procedural uniformity by all examiners.

d. Control measures shall be included to validate and, where necessary, to refine screening procedures.

e. Referral for further evaluation shall be arranged for those pupils who show problems significant enough to warrant further diagnostic study.

12.18 (2) A referral system which includes interaction with pupils, teachers, school administrators, parents and others having specific responsibilities for or knowledge of pupils who may require special education. The referral system shall show specific procedures for:

a. Securing initial screening for previously unidentified pupils who may require special education.

b. Obtaining health history, social work services, psychological evaluation, educational evaluation, vision evaluation, language, speech and hearing evaluations and other evaluations considered necessary for pupils as a result of special education screening or assessment.

12.18 (3) Specialized tests, materials and equipment appropriate to the diagnostic process shall be available for use by qualified professionals.

a. When assessment and diagnostic procedures and instruments are selected, adjustments shall be made where necessary to account for sensory and physical differences, emotional and perceptual characteristics, socio-cultural and linguistic background and home environment of pupils. The appropriateness of such procedures and instruments shall be considered in administering such tests and evaluating the results.

b. Tests to determine the intellectual functioning of hearing impaired pupils shall be selected from non-language performance scales standardized on, or adapted for, the hearing impaired.

12.18 (4) A confidential record, subject to audit by the department, registering the name and certified disability of each child requiring special education and shall be maintained by the area education agency and provision made for its periodic revision. Adequate records of the population screened shall be maintained.

12.18 (5) If the screening, assessment and evaluation procedures required by these rules are performed under contract by an agency other than the school district or area education agency, it shall be the duty of the area education agency to assure that these requirements are met.

12.19(281) Placement.

12.19 (1) The area education agency shall have written procedures for the determination of eligibility and placement of pupils in appropriate special education programs and the receipt by pupils of special education services. The area education agency and any school district therein, in discharging its responsibilities in connection with the provisions of special education, shall employ such procedures. They shall include:

a. The utilization of diagnostic-educational teams for evaluation and placement recommendations for children requiring special education instructional programs.

b. The compilation or acquisition of a comprehensive educational evaluation for each pupil which includes recent evaluations of vision, hearing, language and speech, intellect, social functioning, academic status, health history, and other elements as deemed appropriate by the diagnostic-educational team.

c. A process for informing the parents of the results of screening, assessment, diagnosis and which also provides for parental involvement in determining plans for habilitation prior to placement of any child requiring special education.

d. Specified procedures for parental appeal of placement decisions as defined in section 281.6 of the Iowa Code.

e. The director of special education's certification and assignment of the appropriate weighted enrollment factor.

12.19 (2) When decisions for professional programs and services are made for a particular handicapping condition, the appropriate specialist shall have primary responsibility for recommending the type of program model needed, the extent of services to be provided and the frequency of direct/indirect contacts scheduled for the pupil.

12.19 (3) When recommendations for a pupil with emotional disabilities indicate a need for provision of services in a special class, self-contained special class or class for pupils with severe handicaps, a clinical psychologist or psychiatrist, approved by the department, shall be consulted prior to certification by the director of special education. Such consultation may provide recommendations for additional evaluation, instructional and support services necessary to meet the pupil's needs.

12.19 (4) Placement of each child requiring special education shall be reviewed for appropriateness on an annual basis. When comprehensive re-evaluation is required or requested by school personnel or parent, the pupil shall be referred to the diagnostic-educational team. In either case, written documentation shall be prepared for:

a. Continuation in the program,

b. Transfer to a different program or service, or,

c. Dismissal and follow-up.

12.19 (5) Maximum class size limits are set forth in the following chart and may not exceed the number of pupils indicated.

STATE PLAN AMENDMENT
FOR FISCAL YEAR 1975
UNDER PART B,
EDUCATION OF THE HANDICAPPED ACT,
AS AMENDED BY SECTION 614
OF PUBLIC LAW 93-380

State of Iowa
DEPARTMENT OF PUBLIC INSTRUCTION
Special Education Division
Grimes State Office Building
Des Moines, Iowa 50319

ROBERT D. BENTON, ED.D., STATE SUPERINTENDENT

II. PROCEDURAL SAFEGUARDS
(EHA-B: 613(a) (13))

Following are the procedures adopted by this SEA for insuring that handicapped children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children.

A. Due Process Guarantees. The following due process procedures have been adopted by this SEA to comply with Section 613(a)13)(A)(i)-(iv) of EHA-B, as amended by P.L. 93-380:

1. Definitions

   a. Parent. The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures set out herein.

   b. Pupil. The term "pupil" means a person over seven and under sixteen years of age who pursuant to the statutes of this State is entitled or required to receive a public education; a person under seven or over sixteen years of age who pursuant to the statutes of this State is entitled to receive a public education; and, a person under twenty-one years of age who pursuant to the statutes of this state is entitled or required to receive special education programs and services.

   c. Notification. Terms such as "notice" and "notification" include (1) written statements in English and in the primary language of the parent's home, and (2) oral communication in the primary language of the home.

   d. State hearing officer. The term "State hearing officer" means a person or tribunal of persons who is/are employed by the SEA, are knowledgeable in area of special education, and have been designated by the State

Superintendent of Public Instruction to preside at due process hearings and whose duty it is to assure that proper procedures are followed and that the rights of the parties are protected. A State hearing officer must be:

1) unbiased --- not prejudiced for or against any party involved in the hearing; and
2) disinterested --- not having any personal interest at stake in the outcome; and
3) independent --- may not be an officer or agent of a local educational agency and shall not have been involved in the previous diagnosis, evaluation, prescription of educational services or in the decision process relating to the denial of services or changes in the educational status of a child made by a local educational agency.

e. "Surrogate Parent" -- means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the Surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

f. L.E.A. (Local Educational Agency) -- Means the board of directors of any school district and the board of directors of an area educational agency.

2. Parental Permission for Testing. When there is reason to believe that a preschool or school age child is in need of special education services, and such a child becomes the subject of individual evaluation procedures (formal testing, informal assessment, formal observation), then advanced written permission for such procedures shall be obtained from the parents. Parental permission for screening of a general preschool or school age population is not required. The letter requesting permission for such testing shall contain at least the following:

-- The reasons the evaluation has been requested, and the name of the person who initiated the process,

-- a statement of the right to refuse to permit the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evaluation,

-- a statement of the right to review all relevant records and to be fully informed of the results of the evaluation, and

-- a declaration that the child's educational status will not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.

a. Parents Refusal. If the parents refuse to give permission, the LEA shall attempt to seek resolution through an individual conference(s). If the parents still refuse to allow the proposed evaluation, the LEA shall either accept the decision or appeal to the (State) hearing officer. On appeal, a full adversarial hearing, meeting the requirements set out hereinafter, will be held. In such a hearing, the burden of proof is on the LEA to demonstrate that the continued program placement of the pupil is so dangerous to his/her health or safety or so disruptive to the program for the other children that the initiation of the evaluation procedure is justified as the first step to a special program placement.

b. Parents Failure to Respond. If a parent fails to respond at all to the LEA's repeated attempts by means in addition to regular mail (e.g., telephone, home visit) to obtain consent for evaluation, then the LEA can proceed with the evaluation of special needs, twenty calendar days after written notification is sent to State hearing officer notifying him of the proposed course of action, the reasons for such action and the date on which said action will commence. Ten calendar days prior to the proposed evaluation date, the State hearing officer shall provide notice via certified mail to the parent concerning the proposed course of action, the reasons for such action, the date the proposed course of action will commence and his/her full due process rights in this proceeding. In pursuing this course of action the LEA must:

(1) demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed; and

(2) establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

3. Prior Notice. Whenever a change is proposed in a child's educational program (including proposed changes resulting from periodic reviews), or when a parent's request for a different placement for the child is denied, the LEA must so notify the parent thirty calendar days in advance of the proposed action. Such notice shall be presented orally and in writing, via certified mail. The written notice shall:

a. Describe in detail the proposed or requested action and the reasons why such action is deemed appropriate or inappropriate for the child.

b. Specify any tests or reports upon which the proposed or requested action is based.

c. State that school files, records, and reports pertaining to the child will be available for inspection and copying at reasonable cost.

d. Describe in detail the right to obtain a due process hearing if there are objections to the proposed or requested action, including a description of all of the rights regarding procedures at such a hearing.

e. List those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel themselves.

f. Indicate the opportunity to obtain an independent evaluation of the child at public or LEA expense and including the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost to the parent.

g. When the proposed or requested action involves placement or denial of placement, describe any alternative educational placements which are similar to regular class settings than is the proposed placement, and give the reasons why such alternative placements are not appropriate for the child.

h. Describe the procedures for appealing the decision resulting from the due process hearing.

i. State that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. (In an emergency situation where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by a telephone or written order issued by the State hearing officer).

4. Impartial Due Process Hearing. Following written notice and upon request for a hearing, the procedures set forth below shall be followed:

a. Prerequisities to a hearing. Before the actual hearing is conducted, the following steps shall take place:

1. Prior notice as described in Section A-3, preceeding, shall be provided to the parents.
2. The parents shall be allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.
3. The parents shall be provided the opportunity to obtain an independent evaluation of the child's educational needs at public or L.E.A. expense.
4. The parents shall be provided information as to the identity of the trained State hearing officer that will preside at the hearing.
5. The State hearing officer, twenty calendar days in advance of the due process hearing, shall provide to the parents and to the officials of the LEA written notification as to the time and place of the hearing, which shall be a time and place reasonably convenient for the parents.
6. The parents shall be given the opportunity to exercise their right to compel the attendance at the hearing of any officer, employee or agent of the local education agency or State Education Agency who may have testimony or evidence relevant to the question of the needs, abilities, proposed process or status of the child; and

7. Steps shall be taken to assure that the child will remain in his/her present educational placement until the hearing officer enters a decision following the hearing (excpt that in emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by a telephone or written order issued by the State hearing officer).

b. Procedures at the hearing. The due process hearing shall be conducted in accordance with the following procedures:

1. The State hearing officer will preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony;
2. The parents and the LEA may have representatives, including but not limited to legal counsel or other professional persons, attend the hearing;
3. The hearing shall be closed to the public unless the parents request an open hearing;
4. The parents and the LEA, or their respective representatives, have the right to present evidence and testimony;
5. The parents and the LEA and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing;
6. If a child is over the age of majority, he or she, and his or her representives, including but not limited to legal counsel or other professional persons, shall have the right to attend the hearing.

7. If the child has not reached the age of majority, the parents have the right to determine whether he/she should attend the hearing, except that upon a finding by the hearing officer that attendance by the child would be harmful to the his/her welfare, the child may be excluded from portions of or the entirety of the hearing;

8. The burden of proof as to the appropriateness of any proposed program placement, as to why more regular placements could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the local educational agency;

9. A tape recording or other verbatim record of the hearing shall be made.

10. At all stages of the due process procedures, interpreters for the deaf, and when needed, interpreters fluent in the primary language of the home shall be provided at public or LEA expense.

c. Decision of the hearing officer. The hearing officer's decision shall be issued in accord with the following requirements:

1. The decision shall be in writing and shall be sent by certified mail to the involved officials of the LEA, and to the parents and their respective representatives, within fifteen calendar days of the closing session of the due process hearing.

2. The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed education program, it shall include a statement as to what is an adequate and appropriate educational program for the child. If the decision is to

approve a proposed educational program it shall include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs;

3. The decision of the State hearing officer shall be based solely on evidence and testimony presented at the hearing;
4. A summary of the proceedings at the hearing shall be made, into which shall be included any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties to the hearing;
5. Upon request of the parents or the LEA, a copy of the tape recording or other verbatim record of the hearing shall be transcribed and provided;
6. A statement shall be included indicating that the decision of the State hearing officer is binding upon the parents or child if over the age of majority, and upon the administrative officers, employers or agents of a local educational agency, subject to the procedures for administrative or judicial appeal.
7. The decision of the State hearing officer shall include a statement of the procedures to be used for appealing such a decision which are enumerated in Section (d) which follows.

d. Appeal, Decision of State Hearing Officer. Any concerned party agrieved by the decision of the State hearing officer may, within ten calendar days after the rendition of such a decision, appeal therefrom by filing a written notice of appeal with the secretary of the board of directors of the LEA setting forth the nature of the complaint in a concise manner.

e. Decision of the Local Educational Agency Board of Directors. The board of directors of any local educational agency shall, within thirty calendar days after receipt of a written notice of appeal concerning a decision of the State hearing officer, hear oral arguments as to the decision, review the full hearing record, consider no additional testimony, sustain, modify or overrule the aforementioned decision of the State hearing officer. The provisions of Chapter 28 A, Official Meetings Open to Public, School Laws of Iowa, will be applicable in determining whether the aforementioned appeal is given consideration in an open or closed meeting.

1. A written decision shall be prepared which shall identify the concerned parties and present a review of the points of contention and specifically enumerate the rationale upon which the board's decision is based.
2. It shall also state that the parent has the right to appeal the board's decision within thirty days as prescribed in Section f which follows.
3. A copy of the board's decision shall be sent within five calendar days following the date of the board's official action to the parent and to the State hearing officer.

f. Appeals. The decisions of a board of directors of a school district or an area educational agency may be appealed by a parent to the State Board of Public Instruction, as enumerated in Chapter 290, Appeals From Decisions of Boards of Directors. See Appendix A.

5. Surrogate Parents: In order to provide assurance that every child residing in the state of Iowa and eligible for a public education has the protection of procedural due process, even under circumstances where the child's parents or guardian are not known, are unavailable, or the child is a ward of the state, each child is assigned a surrogate by the Iowa Department of Social Services in accordance with the provision of Chapter 222, Section .31; .32; .33; .34; and Chapter 232, Sections .33; .34; .35; .36; Code of Iowa. See Appendix B.

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KANSAS STATE PLAN
FOR SPECIAL EDUCATION

APRIL 1976

DUE PROCESS

INTRODUCTORY STATEMENT

Due process procedures insure equal education opportunities for all children, including those who are exceptional. Legislation regarding children's rights also provides specific rights of parents or guardians who legally assume responsibility for the child. The following are the procedures adopted by the State Department of Education for insuring that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.

FEDERAL REQUIREMENTS

Local districts/cooperatives desiring to be eligible for federal funds for the education of the handicapped shall comply with any additional due process regulations adopted by the Federal government. As of the drafting of this State Plan such regulations have not been adopted and disseminated. The Kansas State Plan for Special Education will be brought into compliance following publication of the Federal regulations.

LOCAL DISTRICT DUE PROCESS POLICIES

Each local school board shall:

(1) Draft and adopt rules and regulations outlining the due process procedures of its district.

(2) Place a copy on file with the State Department of Education as a part of the district's local comprehensive plan.

(3) Be responsible for all due process proceedings relating to all exceptional children who reside within its district.

Member districts of a special education cooperative may draft jointly a set of due process policies, subject to adoption by the board of education of each member district.

PARENTAL NOTIFICATION OF PROPOSED ACTION

The Special Education for Exceptional Children Act clearly defines the right of the exceptional child and his parents or guardians to participate in educational placement decisions (K.S.A. 72-972 through K.S.A. 72-975). School personnel must plan closely with the home regarding any proposed special education action for any child. Parents or guardians shall be notified before any child may be:

(1) Excluded, reassigned or transferred from regular school classes on the ground that he is an exceptional child and cannot materially benefit from such classes.

(2) Placed in, transferred to or from, or denied placement in special education services. This includes changes in special education programming which result from routine periodic reevaluations of the child's progress.

Notification to parents or guardians of a proposed change in the exceptional child's educational program may be given orally and shall be given in writing by personal delivery or registered mail. Written notification shall:

(1) Describe the proposed action and the reasons why such action is deemed appropriate for the child.

(2) State the right to object to the proposed action and to request a due process hearing within ten (10) days.

(3) State that school files, records, and reports pertaining to the child will be available for inspection.

Written notification shall be in English and in the primary language of the parent's home. Oral communication shall be in the primary language of the home.

If the parents or guardians give written consent for the proposed action, the change may be initiated immediately. In the absence of written consent of the parents or guardians, no action shall be taken "within the period afforded the parents or guardians to request a hearing, which period shall not be less than ten (10) days . . ." (K.S.A. 72-972 (c)).

If there are objections to the proposed action the district shall:

(1) Describe all of the rights regarding procedures at a due process hearing, which shall be complete if they include:

    (a) The right of the child to have counsel of his own choice present and to receive the advice of such counsel or other person whom he may select.

    (b) The right of the parents or guardians of the child to be present at the hearing.

    (c) The right of the child and his counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and of any other material

(d) The right of the child to present his own witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony.

(e) The right of the child to testify in his own behalf and give reasons in opposition to the proposed action, but his failure to testify shall not be considered.

(f) The right of the child to have an orderly hearing.

(g) The right of the child to a fair and impartial decision based on substantial evidence.

(2) Indicate the opportunity to obtain an independent evaluation of the child.

(3) State that the child will remain in his/her present education placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by both parties.

(4) Describe the procedures for appealing the decision which results from the initial due process hearing.

PROCEDURES FOR INITIAL HEARING

As indicated above, one or both parents or guardians may request a hearing to be held fifteen (15) to thirty (30) days after receipt of the notice of action to be taken in the child's educational placement. K.S.A. 72-973 is specific regarding procedural due process.

Following written notice and upon request for a hearing, the procedures set forth below shall be followed:

(1) The parents or guardians shall be allowed access to school reports, files, and records related to the proposed action.

(2) An impartial hearing officer shall be appointed to preside at the hearing. The hearing officer shall be a certificated employee of the school district but shall not be the same person responsible for recommending the proposed action upon which the hearing is based.

(3) The hearing officer shall provide to the parents or guardians and to the officials of the school district notification as to the time and place of the hearing, which shall be a time and place reasonably convenient for the parents or guardians.

(4) The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony.

(5) The parents or guardians, the student, and the school district and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.

(6) The hearing shall be closed to the public unless the student, if over age eighteen (18), the parents or the guardians request an open hearing.

(7) If the child is over the age of majority, he or she shall have the right to attend the hearing.

(8) If the child has not reached the age of majority, the parents or guardians shall have the right to determine whether he/she should attend the hearing, unless the hearing officer finds that attendance by the child would be harmful to his/her welfare. The child may then be excluded from portions of or the entirety of the hearing by the hearing officer.

(9) The burden of proof as to the appropriateness of any proposed placement shall be upon the local education agency.

(10) At all stages of the due process procedures, interpreters for the deaf and, when needed, interpreters fluent in the primary language of the home, shall be provided at the expense of the school district.

DECISION OF THE INITIAL HEARING

(1) The decision shall be in writing and shall be sent by restricted mail to the child and to the parents or guardians or to their respective representatives within 24 hours after the results are determined.

(2) The decision of the hearing officer shall include findings of fact and conclusions of law, and reasons for these findings and conclusions.

(3) The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.

(4) A summary of the proceedings at the hearing shall be made. This shall include any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties of the hearing.

(5) An appeal from the decision of the initial hearing may be initiated by filing a written notice of appeal with the clerk of the board of the district in which the child resides not later than ten (10) calendar days after receiving the written notice of the decision.

APPEAL PROCEDURES TO THE BOARD OF EDUCATION

Appeals may be initiated by the child, his/her parents or guardians, or by the school district. The appeal shall be conducted in accordance with local district due process procedures. The board of education may hear the appeal or may appoint one or more hearing officers.

(1) Any such hearing officer shall be a member of the board, an attorney or a certificated member of the school district, but shall not be any person responsible for recommending the proposed action nor any person who conducted the initial hearing. (K.S.A. 72-974)

(2) Any such appeal shall be heard by the board, or by a hearing officer appointed by such board, not later than twenty (20) calendar days after such notice of appeal is filed.

(3) The pupil and his/her parents or guardians shall be notified in writing of the time and place of the appeal hearing at least five (5) days prior thereto.

(4) A tape recording or other verbatim record of the hearing shall be made.

(5) When a hearing officer is appointed by the board, he/she shall, after hearing the appeal, submit a written report to the board.

(6) After receiving this report, the board of education shall determine the appeal with or without additional hearings and shall render its decision not later than five (5) days after the conclusion of the appeal hearing.

(7) The decision of the board shall be accompanied by a statement that the decision may be appealed to the district court as provided by K.S.A. 60-2101.

GENERAL REGULATIONS OF HEARINGS AND APPEALS

Any person, hearing officer or the board holding a hearing or appeal may administer oaths for the purpose of taking testimony under the authority of K.S.A. 1975 Supp. 72-975. The costs of any hearing or of a board appeal shall be paid by the school district in which the child resides.

Unless appealed, the decision resulting from any hearing or appeal is binding upon the local education agency, its officers, employees and agents.

Unless appealed, the decision resulting from any hearing or appeal is also binding upon the parents or guardians or upon the child if over the age of majority.

K.S.A. 72-977 reads as follows: "When a school district provides special education services for exceptional children as required by this act, and a determination has been made as provided in K.S.A. 72-972 to K.S.A. 72-975, inclusive, of this act, that a child is an exceptional child and special education services are necessary for such child, it shall be the duty of the parent or guardian of such exceptional child to require such child to enroll for and attend the special education services which are indicated by such determination."

EXCLUSION OF EXCEPTIONAL CHILDREN

K.S.A. 1975 Supp. 72-976 reads as follows: "K.S.A. 1974 Supp. 72-976 is hereby amended to read as follows: 72-976. Subject to the provisions of K.S.A. 1974 Supp. 72-972 to 72-975, inclusive, no school district shall be required to keep an exceptional child in regular instruction when the child cannot materially benefit from the work of the regular classroom, nor to provide such exceptional child with special education services for exceptional children in a regular school setting when it is determined that the child can no longer materially benefit thereform, but needs specialized instruction. Nothing in this section shall be construed to limit or supersede or in any manner affect the requirements of each board to comply with the provisions of K.S.A. 1974 Supp. 72-933 and 72-966 to provide special education services for all exceptional children in the school district."

KENTUCKY ADMINISTRATIVE REGULATIONS

707 KAR 1:050

ON

PROGRAMS FOR EXCEPTIONAL CHILDREN

November, 1975

Distributed by:

BUREAU OF EDUCATION FOR EXCEPTIONAL CHILDREN

STATE DEPARTMENT OF EDUCATION

6. At least annually, review the placement of each exceptional child in the school in relation to his educational progress in that setting.
7. Refer cases where appropriate services are not available within the school to the AARC.

(10) Identification of Exceptional Children. Local school district personnel shall commence and/or continue the identification of exceptional children residing in their school district who are otherwise eligible for attendance in public education system but who are not attending a program of the local district. Local school district personnel shall forward a summary report of each identification of a child and the notification of parents to the Department of Education.

Due Process Procedures. Each child and his or her parents and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation, and educational placement of the child in programs for exceptional children. The safeguards shall include the following:

(a) The child shall be represented by his or her parent(s). "Parent" refers to a natural mother or father, an adoptive mother or father, a legally appointed guardian, or a surrogate parent. "Surrogate parent" refers to a person appointed to act in place of parent(s) or guardian(s) when the child's parents or guardians are unknown, are unavailable, or the child is a ward of the state.

✓ (b) The parent(s) shall receive notification from the local school district that their child has been referred as a candidate for programs for exceptional children and that the child has the right to receive an educational opportunity from the public schools.

(c) All communications with parents concerning the identification, evaluation, and educational placement of the child shall include written and oral notification in English and in the primary language of the parent's home.

✓ (d) The local school district shall obtain written parental approval to administer any specific individual psychological, psychiatric, medical and/or educational test for the purpose of placement of a child in a program for exceptional children. Any request to administer such tests shall be accompanied by statements which will inform the parent of:

1. The parent's right to deny permission for such tests, with the understanding that the local school district can request a hearing to present its reasons for the evaluation and try to obtain approval to conduct the evaluation:
2. The parent's right to review all school records pertaining to their child.

✓ (e) If a parent fails to respond to the local school district's repeated attempts to obtain consent for evaluation, by means in addition to regular mail, (e.g., telephone, home visit), the local school district may proceed with the evaluation of special needs. The local school district shall provide notice to the parent(s) regarding full due process rights in this proceeding. The local school district shall:

1. Demonstrate with documentation that it has repeatedly attempted to contact the parent(s) through efforts that were reasonably likely to succeed;

2. Established with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

(f) If the parent(s) refuse to give permission for the evaluation, the local school district shall either accept their decision or shall request an impartial hearing. The written request for a hearing should:

1. Document that resolution by conference with the concerned parents has been attempted and failed;

2. Demonstrate that the initiation of the evaluation procedure is justified because the present placement of the child is detrimental to the child's educational progress, or is dangerous to the child's health and safety, or is disruptive to the program for other children.

(g) If, when the evaluation is completed, a change is proposed in the child's educational program, the local school district shall notify the parent in advance of the proposed action. Such notice shall be presented orally and in writing, the written notice via certified mail. The notice shall:

1. Describe in detail the proposed action as well as the reasons why such action is deemed appropriate;

2. Specify the tests or reports upon which the proposed change is based;

3. State that the school files pertaining to the child are open for parental review;

4. Describe in detail the right to obtain a due process hearing;

5. Inform the parent(s) of alternative educational programs, including reasons why such programs are not suitable;

6. List the community agencies which provide free legal counsel;

7. Inform the parent(s) of the right to obtain an independent evaluation of the child;

8. Describe the procedure for appeal;

9. State that the child will remain in the present educational placement until such time as a decision is forthcoming or until such time that a proposed educational placement is accepted by both parties.

(h) The local school district shall obtain written parental approval prior to the placement of their child in a program for exceptional children. In addition, at the beginning of each school year in which the child has continued placement in a program for exceptional children, the local school district shall provide the parents with written verification of the placement.

(i) In cases where parent(s) and a local school district disagree on the need for evaluation of a child and/or the educational placement of a child, a hearing shall be conducted in accordance with the following procedures:

1. The hearing shall be in the school district of residence and held in the form of a conference between the parents, their representative, a representative of the appropriate Admissions and Release Committee, and the hearing officer;

2. The local school district shall provide factual information concerning the appropriateness of the proposed evaluation or educational placement of the child;

3. An impartial hearing officer shall be appointed to preside at the hearing. "Impartial hearing officer" refers to a person(s) assigned to preside at a due process hearing and whose duty is to assure that proper procedures are followed. The impartial hearing officer must be: (i) Unbiased - not prejudicial for or against any party involved, (ii) Disinterested - not having any stake in the outcome;

4. The hearing officer shall provide parents and local school district representatives with notice of the hearing five (5) days prior to the hearing date. This notice shall include the time and place of the hearing, which shall be convenient for the parents;

5. The parent(s) and the local school district shall be given the right to have legal counsel or other professional persons attend the hearing;

6. All parties involved shall have the right to present evidence and testimony;

7. The hearing shall be closed to the public unless the parent(s) request an open hearing;

8. The parent(s), the local school district, or their respective representatives shall have the right to question all witnesses;

9. If the child is over the age of majority, he/she shall have the right to attend the hearing;

10. A tape recording or other verbatim record of the hearing shall be made;

11. At all stages of the hearing procedures, interpreters for the deaf and/or interpreters fluent in the primary language of the home shall be provided when needed.

(j) The hearing officer's decision shall be issued in accordance with the following requirements:

1. The decision shall be based solely on evidence and testimony presented at the hearing;

2. The decision shall be sent via certified mail to the parent(s), to the local school district, and to their respective representatives, return receipt requested, within five (5) days of the completion of the conference;

3. The decision shall include a summary of all proceedings and state the reasons for the decision;

4. Upon request of the parents or the local school district, a copy of the tape recording or other verbatim record of the hearing shall be transcribed and provided;

5. A statement shall be included that the decision of the hearing officer is binding upon the parent(s) or the child if over the age of majority, and upon the local school district, its officers, employees and agents, subject to procedures for administrative or judicial appeal;

6. The decision of the hearing officer shall include a statement of the procedures to be used for appealing such decision.

(k) Appeals may be initiated by a parent(s) or by the local school district in accordance with these requirements.

1. The appeal shall be heard by the State Board of Education or its impartial designee. Any designee shall meet all requirements described for hearing officers;

2. The appeal shall be conducted in accordance with state administration procedure;

3. The opportunity shall be given to the parents to appeal the decision of the State Board of Education or its designee to a state court:

(l) In order to provide every child eligible for a public education with the protection of procedural due process, even under circumstances where a child's parent(s) or guardian(s) are not known, are unavailable, or the child is a ward of the state, each child shall be assigned a parent surrogate.

(m) The State Department of Education and local school districts in cooperation with other public and private agencies shall recruit persons and maintain a registry of such persons who can and will serve as surrogate parents. Persons selected as surrogate parents shall:

1. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

2. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

3. Be of the same racial, cultural, and linguistic background of the children they represent;
4. Be familiar with the educational system within the state;
5. Be readily accessible to the children they represent.

(n) Assignment of a surrogate to a particular child shall be made according to the following procedures:

1. Any person may file a request for the assignment of a surrogate to a child with the child's local school district with a copy of the request to the State Department of Education.
2. The local school district shall send a notice of the request for a surrogate to the adult in charge of the child's place of residence and to the parent(s) or guardian(s) at their last known address in an effort to determine the need for a surrogate parent.
3. If the local school district determines need for a surrogate as provided in Section 1 (11), the State Department of Education shall be notified of the need. The State Department of Education shall assign a surrogate within five (5) days of the notification.
4. The assigned surrogate shall represent the child through the time of the first periodic review of the child's educational placement.
5. Surrogates shall not be assigned to children who have reached the age of majority.

(o) If at any time during the school year, the child's educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s), or specialist(s) providing services to the child, any one of such persons may request a review of the placement:

1. When a placement in a less restrictive environment is seen as more appropriate, the Admissions and Release Committee shall review the child's placement. If the Committee determines the child's needs can be met in a less restrictive setting, the child's placement and educational program shall be changed and support services provided as necessary. The parent(s) and local school district shall be afforded all due process rights as described in Section 1 (11).
2. When a review is requested for the purpose of securing a more restricted educational placement for the child, the review shall take place after the current educational program has been implemented for the minimum time of one (1) month. The Admissions and Release Committee shall conduct the review. The parent(s) and local school district shall be afforded all due process rights as described in Section 1 (11).

SECTION 2. PROGRAMS FOR CRIPPLED AND OTHER HEALTH IMPAIRED.

(1) Eligibility Criteria: A pupil shall be eligible for enrollment in a program for crippled and other health impaired if a licensed physician determines that he is physically unable to attend regular class. A medical statement by a licensed physician shall be on file in the central office. The Admissions and Release Committee shall review this statement as well as any additional reports, information and assessments deemed necessary for placement of each individual child in an appropriate educational program.

(2) Program Membership:

(a) Program membership shall be 6-15 pupils per teacher for the Special Class Plan.

GUIDELINES FOR PUPIL APPRAISAL SERVICES
STATE OF LOUISIANA

A SERVICE MANUAL DESIGNED TO FACILITATE:

THE REFERRAL PROCEDURE
THE EVALUATION PROCESS
FOLLOW-UP SERVICES

The teacher upon receipt of the packet will complete the following:

Request for Special Educational Services (4 copies)
Pupil Data Form (3 copies)
Behavior Checklist (1 copy)

The referral forms call for a birth certificate number and social security number or pupil state number (pseudo social security). In cases where a student does not have a social security number, the parish liaison person will assign a state number prior to procession through competent authority. (Blocks of state numbers may be obtained through the local regional competent authority director who is furnished the numbers by the State Department of Education.)

On completion of the above, the teacher will submit the referral packet to the school principal for review.

(06) REFERRAL REVIEW, PRINCIPAL

confer

The principal will review the case with the referring teacher and all concerned with the education of the child including the parent/guardian to determine what action is needed to help the child. It is the responsibility of the principal to make the decision to either terminate or proceed with the referral process. If the principal's decision is to terminate the referral process, the principal will advise the parent/guardian in writing of that decision and inform him that upon parental request he will proceed with the referral process.

note

If the child is referred directly to the school board, that referring authority, in conference with the parents, will assume responsibility for terminating or proceeding with the referral of the child.

Const

(07) CASE CLOSED (NO FURTHER ACTION)

If the principal and parents agree not to pursue referral services, the case is closed. Closure of the case is noted on the Request for Special Education Services form and copy 2 (blue) is to be detached from the referral packet and sent to the parish liaison person for parish files and for reporting to the State Bureau of Special Education. The remainder of the packet is to be placed in the pupil's cumulative record and shall be treated as confidential information.

(08) PARENTAL CONSENT

consultation
Const

It is the responsibility of the school principal to explain to the parent/guardian the child's observed difficulties, the referral process, the reasons for referral, and possible recommendations that may result from further evaluation and diagnostic testing. They should be advised that recommendations will be discussed with them prior to any educational placement.

If it is determined by the school principal, in conference with the parent, to proceed with the referral process, the school must secure written consent for further evaluation and, if indicated, diagnostic procedures.

Consent

When parental consent for referral is given, the remainder of the referral packet should be completed obtaining the parent's/ guardian's signature on the necessary forms:

Family Data Form
Permission for Case Study (2 copies)
Information Request (4 copies)
Release of Information (4 copies)

other

School personnel should give any assistance needed by the parent/guardian in completing the Family Data Form in the referral packet. Give the letter (found in the referral packet) to the parents and suggest they retain it for their records. The principal shall ascertain that the referral packet is properly completed (including all necessary signatures) and forward it to the parish liaison person. The school shall retain the white copies of Request for Special Services and Pupil Data Form, to be filed in the child's cumulative record, and these shall be treated as confidential information.

09) CASE CLOSED (NO FURTHER ACTION)

Note

If the parent/guardian does not agree to continue the referral process and will not give written permission for the case study, the case is then closed (09). Parent/guardian is requested to sign on the Request for Special Educational Services form, when he does not wish to proceed with referral.

Closure of the case is noted on the Request for Special Educational Services Form in the referral packet. Copy 2 (blue) is sent to the parish liaison person for parish files to be used in reporting to the State Bureau of Special Education. The remainder of the packet is to be placed in the pupil's cumulative record, and should be treated as confidential.

10) REFERRAL REVIEW, PARISH STAFF

The referral packet is received and reviewed by the parish liaison person for further processing. The parish liaison person will accept and process all referrals from teachers, principals and parents. If indicated, conferences may be held with appropriate school personnel and/or parent/guardian. A decision can be made to close the case (11) or continue the referral process (12), (14), and/or (16). If the decision is made to close the case, then the parish liaison person must advise the parent in writing of the decision and inform the parent that upon parental request the referral process will be continued. notice

(11) CASE CLOSED (NO FURTHER ACTION)

Cases may be closed by the parish liaison person when a student leaves the parish, a parent withdraws permission, a student is evaluated by another source, etc. In this case, as in all others, there should be effective communication between all levels and personnel within the system concerning all actions taken. Cases cannot be closed by the parish liaison person due to the number of children on the waiting list for services.

If the Parish Referral Review Staff, in conference with the parent/guardian (10), determines the child is in need of any of the various ancillary educational services as indicated in Pupil Status Designations (12), (14), or (16), referrals should be made to the recommended service. This action is noted by appropriately signing and dating the Request for Special Services form.

(12) REMEDIAL SERVICES, SCHOOL OR PARISH

Should the parish school system have special programs or other local resources that may meet the needs of the child, (i.e., remedial reading program, tutorial services, etc.) the child may be assigned to such programs. This shall not include special class placement. Assignment to Remedial Services (12) does not preclude referral for other Special Services (14) or Diagnostic Testing (16). When an Assignment is made and no further action is needed the case may be closed (13).

(13) CASE CLOSED

If Remedial Services, School or Parish (12) assignment is deemed adequate for meeting the child's needs, and no further action is indicated the case shall be closed (13). This shall be noted on the Referral for Special Education Services form and reported to the State Bureau of Special Education by the parish liaison person. The referral packet may be retained in the child's cumulative record, and shall be treated as confidential information.

(14) OTHER SPECIAL SERVICES

Should Other Special Services (14) (i.e., health, mental health, social, educational, etc.) be indicated as an intervening factor or measure, such services available in and to the parish school system shall be utilized. This does not preclude the child's referral for evaluation and diagnostic services (16). If the parish has the capability of doing vision and hearing screening, these records should accompany the referral packet.

Ideally, every child should have a general medical examination by a physician prior to referral to a testing team. In all instances where there is obvious evidence of a problem of a medical nature every effort should be made to secure appropriate medical service.

(15) CASE CLOSED

When other special services (local or community resources) are deemed adequate to meet the child's needs, the case is closed (15). This should be noted on Request for Special Services form and reported to the State Bureau of Special Education by the parish liaison person.

(16) REFERRAL TO COMPETENT AUTHORITY DIAGNOSTIC AND EVALUATION TEAM

When the need for further evaluation and diagnostic services is deemed necessary, the parish liaison person will refer the case to a Competent Authority Diagnostic and Evaluation Team (16). It is the prerogative and responsibility of the parish liaison to establish priorities and the order in which children will be referred for competent authority evaluation. Waiting lists remain at the parish component level. In coordinating field services the parish liaison person in conference with all concerned will determine the place, time and date of testing and notify the parent, principal, and director of competent authority.

All blue copies of forms in the referral packet should be detached and retained by the parish liaison person. The remainder of the packet should be sent to the Competent Authority Diagnostic and Evaluation Team.

(17) CASE CLOSED

dhr

When the child fails consistently to keep appointments for any reason the case may be closed by the parish liaison person. Closure of the case should be noted on the Request for Special Education form. The case may subsequently be reactivated upon parental request.

(19) FAILURE TO APPEAR FOR EVALUATION AS SCHEDULED

(54) TERMINAL REPORT TO PARENTS AND PARISH

All reports from any competent authority must be appropriate, contain adequate information to support the recommendations made, and be useable by the school system in which the child is to receive services.

(a) The social worker shall hold a terminal conference with the parent/guardian to discuss and interpret test results and recommendations. Upon request, a written summary statement of the diagnosis and recommendation will be provided to the parent/guardian. A written report of this parent conference shall be attached to the terminal report submitted to the parish liaison person. The parent/guardian shall have the right to have the child retested by other competent public or private authorities and, if the retesting justifies, to determine the correct evaluation in the district court or juvenile court of the parish of the child's domicile.

(b) The educational consultant will hold a conference with the child's teacher and/or other appropriate school personnel to explain the test results and recommendations. A written report of this conference shall be noted on the terminal report to the parish liaison person.

(c) On completion of (a) and (b), a written terminal report will be sent to the parish liaison person.

All reports to be used for competent authority purposes must display the signature and competent authority number of each team member testing and reporting; i.e., John Doe 12745 (24). The (24) denotes the signature of a regional special education center based psychologist (see Appendix II).

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(58) EDUCATIONAL FOLLOW-UP SERVICES

Follow-up, or supplementary consultant services, to be provided by an educational strategist, should be designed to augment Competent Authority Diagnostic and Evaluation Teams and to assist the school system in delivering special educational services by functioning as adjunct to and link between the appraisal and remedial components. Specific functions should include the following:

(a) Follow up cases evaluated by the diagnostic teams when designated as in need of continued assistance and/or services;

(b) Aid special classroom teachers, resource teachers, itinerant, and regular classroom teachers in implementing recommendations and in using specific methods, materials and techniques;

(c) Aid and work with parish supervisors in a consulting capacity;

(d) Assist in faculty meetings and/or service-training programs in relation to delivery of special educational services.

Strategists will function within the rules and regulations of the parish system and in cooperation with the special education supervisor. Duties should neither exclude nor substitute for the services performed by social workers, psychologists, educational consultants, and speech and hearing consultants, but should be an extension of such services.

The educational strategist should have certification in at least one area of special education, should have a minimum of three years' teaching experience in a regular and/or special class, should demonstrate proficiency in the use of materials and methods appropriate for the various exceptionalities, and of great importance, should demonstrate proficiency in teaching, staffing, and public relations.

EDUCATIONAL SERVICE COMPONENT

In the event there is some question about recommendations emanating from the diagnostic services, provision is made for a review by parent/guardian and/or parish (60). If there is unresolved conflict regarding diagnostic findings and/or recommended program placement, the matter may be referred to the local Special Education Monitoring Council, designation (61), for informal mediation. Otherwise the case status moves to designation (62), Educational Services Pending. Case status is always initialed and dated by the parish liaison person as the case status changes.

(60) PARENT-PARISH REVIEW

After receiving the terminal report from the Competent Authority Diagnostic and Evaluation Team the parent/guardian may request a review at the parish level prior to implementation of the recommendations. The parish liaison person will arrange a conference with the Competent Authority Diagnostic and Evaluation Team to review the case and consider any additional information concerning the case. If the parish staff has a question relative to a diagnosis or recommendation, a conference to include any or all persons concerned may be requested by the parish liaison person. The parent/guardian will be informed on all taken.

(61) PARISH SPECIAL EDUCATION SERVICES MONITORING COUNCIL

If an agreement regarding recommendations cannot be reached, the parent/guardian may appeal to the Parish Special Education Monitoring Council, by contacting the school board member from his district.

The primary function of the Council is threefold: (1) to assist in implementation of Act 368; (2) to serve as mediator with appellant parent/guardian, Competent Authority, and school officials regarding unresolved dispute of diagnostic evaluation findings and/or recommendations made concerning class placement (The Council may make appropriate recommendations to appellant parent/guardian and school officials.); and (3) to assist the school systems in promoting school and community special educational services.

The Council should meet as a body at specified intervals, not less than semi-annually; however, the Council may be called into session at any point upon request of an ombudsman.

This Council will be made up of the following:

I. Professional

  A. A competent authority director and/or one designate.

  B. A parish superintendent and/or one designate.

II. Ombudsman

  A. A local school board member from an appellant child's school district.

III. Consultants

  A. A representative of a local parent-teacher organization (to be selected by that organization).

  B. A medical doctor (to be selected by the Louisiana Medical Association).

  C. An attorney (to be selected by the local Bar Association).

  D. Two consumer parents (to be selected by vote of a simple majority of the other committee members from a list submitted by the parish school superintendent.)

IV. Appellant

  A. Two parents and/or legal guardians.

  B. A representative of the appellant child/parent's choice.

When recommendations have been accepted and educational services are to be rendered by the parish, the case status moves into the Educational Services Component. As case status changes, the appropriate case status designation is initialed and dated on the Request for Special Services form by the parish liaison person.

(62) EDUCATIONAL SERVICES PENDING

This category is a holding stage for those students who have been evaluated and recommended for Special Educational Services but no placement has occurred because of lack of facilities, teacher, etc. No child is to be excluded from regular classes during this stage except as otherwise provided by state statutes, rules and regulations.

(63) CASE CLOSED (PARENTAL PERMISSION REFUSED)

If a parent refuses special class assignment, the case may be closed and so noted. (A signed statement to the effect the parent refused special class assignment should be obtained and made a permanent part of the record.)

consent

(64) PLACEMENT IN SPECIAL PROGRAM

When a student, recommended for a Special Education class, is actually assigned, the date of this action is to be noted on the control sheet (Request for Special Service form). Prior to this assignment the parent/guardian must sign a consent form for placement within the parish program.

(65) SIX-MONTH RE-EVALUATION PENDING

When a question has been raised regarding a student placement, the parent/guardian (see Act 368) has the right to request a re-evaluation after six months of attendance in the special class. This action will be initiated by the parish liaison person in cooperation with the parent/guardian.

(66) SIX-MONTH RE-EVALUATION COMPLETE, IN SPECIAL PROGRAM

The six month re-evaluation has been completed and the student is in a Special Program.

(67) SIX-MONTH RE-EVALUATION COMPLETE, CASE CLOSED

Results of re-evaluation indicated the child is no longer in need of Special Program placement.

(69) ONE-YEAR RE-EVALUATION PENDING

This case status is for those children who have previously been evaluated but who for some reason warrant a re-evaluation after one year. This re-evaluation may be requested by parent/guardian, parish staff, or Competent Authority Diagnostic and Evaluation Team.

(70) ONE-YEAR RE-EVALUATION COMPLETE, IN SPECIAL PROGRAM

The one-year re-evaluation has been completed and the student is in a Special Program.

(71) ONE-YEAR RE-EVALUATION COMPLETE, CASE CLOSED

Results of re-evaluation indicated the child is no longer in need of Special Program placement.

(73) THREE-YEAR RE-EVALUATION PENDING

Act 368 requires that each child in a special class be re-evaluated every three years for continued placement. A new referral packet must be initiated for each re-evaluation.

(74) THREE-YEAR RE-EVALUATION COMPLETE, CONTINUING SPECIAL PROGRAM

(75) PROGRAM COMPLETED - FILES CLOSED

This last case status designation indicates that all possible or appropriate special educational services have been rendered and the case is no longer active. Examples of this are (1) results of the most recent evaluation indicate no further need for special class placement, (2) the child has exceeded age limitations, (3) the recommended special services program has been completed, or (4) other specific reasons; i.e., death, moved from the school system, or parental refusal to allow a child to continue on the special education services program.

SPECIAL EDUCATION

ADMINISTRATIVE HANDBOOK

NoTE! → (Being Revised)

STATE OF MAINE

DEPARTMENT OF EDUCATIONAL AND CULTURAL SERVICES

CARROLL R. McGARY, COMMISSIONER

R.S.T. 20, C. 404, ADDITIONAL

3. Periodic review of progress of children for whom it has recommended special education.

F. Resource Room shall be defined as a room where exceptional children are provided special education instruction which supplements the major portion of their instructional program.

G. Evaluative Study shall be defined as a study of diagnostic and all other relevant information from appropriate professional personnel concerning a child which is required for purposes of determining the special education needs of the child.

IV. IDENTIFICATION, DIAGNOSIS AND EVALUATION

Every administrative unit shall establish procedures for studying its total school population so that all children who may require special education will be identified and evaluated to the extent necessary to determine whether they should be provided a special educational program. The administrative unit is responsible for the cost of such identification, evaluation, and diagnosis (subject to reimbursement) as needed for planning and implementation of a special education program for each exceptional child. Additionally, it is recommended that the administrative unit identify its preschool exceptional child population so as to allow those identified who will be age five (5) by October 15 to be admitted to appropriate school programs in the school year starting during the year of the child's fifth birthday.

Every administrative unit shall establish, as needed, one or more Pupil Evaluation Teams (PET's) or approved alternative procedures except when a waiver is requested and approved by the Commissioner. Each PET shall include but not be restricted to administrative, instructional and pupil personnel staff of the administrative unit. When one or more PET's are required in an administrative unit, provision should be made for coordination and system-wide consistency of policy.

The PET shall be responsible for doing an evaluative study on all students referred for special education services. Each team shall determine diagnostic data necessary, evaluate educational significance of such data, and formulate appropriate plans for the child's program. The PET shall review the diagnostic-evaluation data for each child identified as possibly requiring special education and shall recommend to the superintendent the appropriate program. If additional data, or special consultants are necessary, the PET shall recommend such services to the superintendent of schools.

Evaluative study by the PET is not required for children placed on home instruction for less than six months for medical reasons (i.e., broken bones, pregnancy, communicable diseases, etc.). This exemption does not apply to any other types of exceptional child placed on home instruction.

The PET must review at least annually, and more frequently if needed, the progress of each handicapped child receiving special education, studying all information relevant to the continued placement of such child in a special education program.

Whenever a child requires a special program, with exception of home instruction for medical reasons, (i.e., broken bones, pregnancy, communicable diseases, etc.) parents or guardians shall be advised, in the primary language of the home of such child, of the nature of their child's exceptionality, the purposes and scope of the proposed special education program and shall receive reports of the child's progress.

The PET shall assure the maintenance of complete and specific records of diagnostic procedures attempted, the results, conclusions reached, suggested courses of special education and treatment best suited to the child's needs.

V. PROVISION OF SPECIAL EDUCATION SERVICES

When the Pupil Evaluation Team (PET) and the superintendent of schools agree that a child needs a special education program, the administrative unit shall provide such a program as soon as administratively possible.

Insofar as possible, and consistent with their educational needs, children should be maintained in the regular school program and provided such supplementary instruction or special services as may be required. However, when special class placement is the desirable program such special class must be provided.

VII. REIMBURSEMENT AND EXPENDITURES

Maine statutes provide for State subsidy of the cost for special education programs and services. Reimbursement is only for programs provided for children identified or being evaluated as exceptional children requiring special education. Expenditures for salaries, for example, are special education costs only to the extent that the staff member is actually employed to perform services in an approved program for exceptional children or for the identification of such children.

VIII. ADMINISTRATIVE REVIEW

The school administrative unit shall establish and use a hearing procedure in cases of appeal by parents or guardians, of the school's decisions regarding placement, denial of placement, or continuance of their child in a program of education appropriate to his condition and needs.

The hearing procedure shall provide:

✓ A. Notification of the parent/guardian of the written decision of the administrative unit accompanied by notification to the parent/guardian of the right to make an oral or written request for an appeal hearing.

✓ B. Opportunity for the parent/guardian to be assisted or represented by an attorney or other person in presenting the appeal.

C. Opportunity for the parent/guardian or representative to examine the documents and records presented to support the decision under appeal.

D. That the hearing be held with reasonable promptness and convenience to the parent/guardian, with at least seven days' notice as to time and place of the hearing.

E. Opportunity for the parent/guardian to present evidence supporting his position, and to question or refute evidence to the contrary.

F. That the hearing be conducted by the local school committee or board of directors. The school committee or board of directors may elect to appoint a hearing official instead of conducting the hearing themselves. In this event, the hearing official must be appointed by mutual agreement between the board of directors and the parent or guardian. This person shall not have participated in making the decision under appeal. If such agreement cannot be reached, the Commissioner of the Department of Educational and Cultural Services shall appoint a hearing official.

G. That a record of each hearing be prepared which shall include:

1. The decision being appealed.
2. Evidence presented at the hearing.

H. That the decision of the school committee or hearing official be based on the evidence presented at the hearing which was made a part of the hearing record.

I. That the parent/guardian or representative be notified in writing of the school committee's or hearing official's decision forthwith.

J. That a record of each hearing shall be preserved for at least two years.

K. If any person desires to appeal the decision of this hearing, the State Board of Education will consider the request and may appoint an appeal hearing official to review the record of the hearing and conduct an appeal hearing.

PROPOSED AMENDMENTS

SPECIAL EDUCATION BYLAW

TO REPEAL AND RE-ENACT

BYLAW 13.04.01.01

Programs for Handicapped Children

APPROVED BY THE MARYLAND STATE BOARD OF EDUCATION

October 30, 1974

Symbology:

Single Underline - Proposed Amendments
Double Underline - New Matter Proposed
Brackets - Material Deleted

5/75
5/75-2

programs, vocational guidance and counseling services, home and hospital instruction, special education centers, nonpublic educational institutions for the handicapped, State-operated day and residential schools and State-supported schools.

(3) Local education agencies shall not assess nor assign children to special educational programs and services solely on the basis of national origin, linguistic, or cultural differences.

(4) Children shall be considered for enrollment in residential schools only when their handicapping condition is evaluated as severe or profound and its effect on the child's home and school environment requires total environmental support.

I. Local and State education agencies shall be able to enter into agreements with other agencies to provide special educational programs and services which are impractical in a single school system. Children receiving such programs or services shall remain the responsibility of the resident system.

J. Health services supporting special programming shall be provided in accordance with the guidelines developed jointly between the Maryland State Departments of Education and Health and Mental Hygiene as described in Article 77, Section 85.

.03 Parental Rights.

A. Parents or legal guardians of children with handicapping conditions shall have the right to review information pertaining to screening, educational assessment, the educational management plan, and exclusion or exemption from school privileges in accordance with Article 77, Section 100A.

B. Each local board of education shall establish and implement a hearing procedure for any parents or legal guardians of children who are in, or in need of, special education programs when a request is made in writing, for good cause, to review diagnosis, evaluation of educational programs provided for the child by the local board of education, or the exclusion or exemption from school privileges of the child by the local board of education. Procedures are to be in keeping with standards for such hearing procedures as established by the State Board of Education. After exhaustion of all locally available administrative remedies and procedures, the parents or legal guardians of children who are, in their view, in need of special education programs or the board of education responsible for providing special education for such child, with good cause, may request in writing to the State Board of Education, a review of the case. The State Board of Education shall implement the procedures within 60 days after receipt of the request for such hearing as indicated in Article 77, Section 100 A, Annotated Code of Maryland.

C. Parents or legal guardians have the right of prior informed consent regarding their child's psychological evaluation, confidential information usage, special education programming and placement in accordance with procedures established by each local education agency.

.04 Identification of Children.

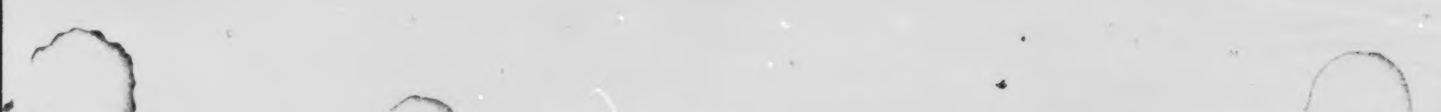
A. Screening

(1) The local education agency shall cooperate with local health

REGULATIONS

766

massachusetts department of education



state hospital school, where the father or mother with whom such child lives when at home, lives in the city, town or school district over which such school committee has jurisdiction. Where such a child has no father or mother living in the Commonwealth who can be found after reasonable efforts to do so, the Department of Education shall assign a city, town or school district to such child for purposes of this paragraph.

+202.1 (d) Children in a living situation other than that described in 202.1 (a), (b) and (c), where such children live in the city, town or school district over which such school committee has jurisdiction. Where such child has a father or mother living in the Commonwealth, the school committee responsible for such child pursuant to this paragraph may bill and receive payment for the costs of educating such child from the school committee with jurisdiction over the city, town or school district where such father or mother lives. The school committee with jurisdiction over the city, town or school district where such mother or father lives shall pay the costs of educating such child, upon receipt and certification of such bill. Where such a child has no father or mother living in the Commonwealth who can be found after reasonable efforts to do so, the Department of Education shall assign a city, town or school district to such child for purposes of this paragraph.

202.2 In addition to the provisions of paragraph 202.1, the school committee of each regional school district and regional vocational school district shall be solely responsible for satisfying all requirements of these regulations, unless exceptions are otherwise specified, for all school age children enrolled in the schools under the control and supervision of such school committee.

203.0 Communications to parents and school age children where the primary language of the home is other than English and where the parents are unable to read.

Each school committee shall insure that all communications with parents (or with the school age child where such child is eighteen years of age or older) pursuant to these regulations be in both English and the primary language of the home, if such primary language is other than English. Such communications shall be made, to the extent possible, in simple and commonly understood words. Each school committee shall also insure that if the primary language of the home is other than English, all screening and evaluation, including the conferences and meetings with the parents and school age child which are part of the process of such screening and evaluation, shall be conducted by persons fluent in such primary language. If such a person is unavailable, such school committee shall utilize the services of an interpreter properly oriented to the procedures and objectives involved in the particular part of the screening or evaluation process. Where the parents (or the school age child where such child is eighteen years of age or older) are unable to read in any language or are blind, communications shall be made both in writing and orally.

204.0 Implementation in a manner different from that required by these regulations.

Each school committee may submit, in writing, a proposal for approval by the Division for the satisfaction of any requirement in these regulations in a manner different from that specified in these regulations. The Division may approve such proposal if it shows substantial promise of contributing to improvements in the methods for meeting the goals of these regulations and if such proposal does not conflict with any provision of Chapter 766 of the Acts of 1972. No such proposal shall be implemented until approved by the Division.

205.0 Children attending private schools completely at private expense.

Nothing contained in these regulations shall be construed to limit the right of parents to have their children educated at private schools, completely at private expense.

206.0 School age children of ages sixteen through twenty-one: Consent of parents and children.

The requirements of these regulations shall not be construed to require the attendance at school of school age children of ages sixteen through twenty-one who have left school. Attendance at school by such school age children shall be completely voluntary. A school age child of ages eighteen through twenty-one shall be entitled to all of the rights given to school age children by these regulations and all of the rights given to adults by applicable laws. Each school committee shall make every effort to advise school age children of ages sixteen through twenty-one who have left school of all program options available to them in the school system.

+207.0 Right of parents (or the school age child where such child is eighteen years of age or older) to be accompanied to meetings and conferences.

Where a meeting or conference with parents (or the school age child where such child is eighteen years of age or older) is required or permitted by these regulations, such parent (or school age child where such child is eighteen years of age or older), at his/her expense shall have the right to be accompanied and represented by one or two persons of his/her choice.

+208.0 Procedures when parent fails or refuses to participate and where participation is required by these regulations.

Where these regulations require the participation of a parent and such parent fails or refuses to so participate, the school committee shall conduct an investigation of such failure or refusal. Such school committee shall make every effort to contact the parents, keeping a record of such efforts. Such efforts may include, as necessary, additional written notices sent by certified mail, telephone calls to the home and home visits at such times as the parent is likely to be at home. The goal of every contact with the parent shall be to explain the special education procedures and the necessity for participating in the particular situation involved. If the above

+310.7 Maintaining a current list and description of program options available for school age children in need of special education services.

+310.8 Working jointly with the CET's to find the best combination of educational and other services for each school age child in need of special education services.

+310.9 Working jointly with the CET's in recommending to the Division placements of school age children in need of special education services in the program prototypes described in paragraphs 502.5 (day school program) and 502.6 (residential school program).

310.10 Working jointly with the CET's in carrying out any other duties required by these regulations.

+311.0 Evaluation: CET's; composition for writing the educational plan.

For each individual full core evaluation, the persons listed below shall meet to write the educational plan of the school age child who has been evaluated. For each intermediate evaluation all of the persons who have conducted assessments, as well as the persons described in paragraphs 311.7 through 311.10, in 311.11 where an approved vocational educator has been invited to participate, and in 311.12 where the child is participating, shall meet to write such educational plan. No one person shall fill more than one of the positions listed; provided, however, that a registered nurse may fill the position described in paragraph 311.2 and may also act as the physician's designee; and provided, further, that the chairperson may fill any one of the other positions of the CET.

311.1 A chairperson who shall be designated by the Administrator of Special Education from among the members of the CET.

311.2 A registered nurse, or social worker with a master's degree in social work or a certified guidance or adjustment counselor.

311.3 A certified psychologist or one licensed to practice in Massachusetts.

311.4 A physician who is licensed to practice in Massachusetts or in another state having comparable or higher licensing requirements; provided, however, that the physician's report may be presented by a designee of such physician when such physician is unable to attend the meeting of the CET because of professional obligations. Such designee shall be another physician or a registered nurse.

311.5 A certified or approved teacher who has recently had or currently has the child in a classroom or other teaching situation.

311.6 An administrative representative of the local school department.

311.7 A parent of the child.

311.8 The teacher who will be primarily responsible for teaching the child as soon as the identity of such teacher is known.

311.9 The primary person, if any, who will be assisting the teacher described in paragraph 311.8 in implementing the child's educational plan as soon as the identity of such person is known.

+311.10 Upon the request of the child's parents, and at their expense, any professional outside the school system who is currently working with such child.

+311.11 An approved vocational educator, as deemed necessary by the CET chairperson, when the child to be evaluated is of ages sixteen through twenty-one. Where the CET intends to make a vocational education prescription for any such child, a vocational technical school director shall be consulted.

+311.12 The child, at his/her request, if such child is of ages fourteen through twenty-one; the CET shall notify such child for whom an educational plan is to be written of his/her right to be present at and to participate in the writing of such plan and shall keep a written record of such notification and of the child's response. If the child is younger than fourteen, the CET may invite such child to be present at and participate in the writing of such plan, if the CET decides that such presence is necessary or desirable and in the best interests of the child.

312.0 Evaluation: CET's; composition; specialists.

For the evaluation of any school age child, specialists who are certified, licensed or board-registered shall be added to the CET, after a request for such specialists to the CET chairperson by a member of the CET who is conducting any of the assessments as part of the evaluation. The following shall apply to the selection of such specialists:

312.1 In making a request for a specialist, the CET shall be governed solely by considerations of the needs of the child and the child's family.

312.2 The CET shall obtain parental consent before requesting a specialist.

313.0 Evaluation: CET's; composition in certain situations.

Where a school age child has been referred for an evaluation and, at the time of such referral, such child is in a hospital or is otherwise living away from home, the following shall apply:

317.0 Evaluation: Referral; notice to parents.

No later than five days* after a school age child is referred for an evaluation by any of the persons listed in paragraphs 316.1 through 316.6, the school committee shall send a written notice to the parents of such child informing them of the following:

317.1 That a referral has been made including the name and position of the person making such referral.

317.2 The nature of the evaluation process including a description of the specific assessments of the child that will be conducted.

317.3 Whether a full core or intermediate evaluation has been recommended and of the right of the parent to a full core evaluation, upon request, regardless of the recommendation.

317.4 Of the date when the evaluation will begin and of the right of the parents to meet, with or without their child, with the chairperson of the CET or a designee of such chairperson, prior to that date to discuss the reasons for the referral and the nature of the evaluation including the possibility of a home visit, with parental consent.

+317.5 That they have the right to be present at and participate in all meetings of the CET where the educational plan is being developed and written and that such meetings will be held at a mutually convenient time and place; that their child also has the right to be present at and participate in all such meetings in accordance with the provisions of paragraph 311.12.

317.6 That the evaluation, including a recommendation of a suitable educational plan for the child, shall be completed no later than thirty school working days after the date of the notice letter, with specific reference to the date on which such thirty-day period expires.

317.7 That they may obtain an independent evaluation from an approved facility or, at private expense, from any specialists.

+317.8 That the parents will be sent a written notice containing a thorough explanation of the results of the evaluation within ten days after its completion and that such notice will include a copy of the proposed educational plan and a complete statement of the right of the parent to meet with the CET liaison person, as provided for in paragraph 323.0, to accept such plan, to reject such plan, to resolve differences of opinion during a required thirty-day time period and to appeal, as well as their right to an independent evaluation. A statement of the intended placement of the child during the evaluation process shall also be included.

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*If the last day for sending any notice required by these regulations is a Sunday or a day when school is closed (excluding the summer vacation), the time allowed for the notice shall be extended to the next day when school is open.

317.9 A copy of the notice required by this paragraph shall also be sent by mail to the child where the child is eighteen years of age or older. Included in such notice shall be a description of the rights of such child as stated in paragraph 206.0.

318.0 Meeting between parents and CET prior to evaluation.

Each school committee shall insure that the parents of each child referred for an evaluation have an opportunity to meet, with or without their child, with the chairperson of the CET, or the designee of such chairperson, prior to the date of the evaluation to discuss the reasons for the referral and the nature of the evaluation, including the possibility of a home visit, with parental consent.

+319.0 Evaluation: Full core and intermediate.

Within thirty school working days after the date of notification provided for in paragraph 317.0, the school committee shall provide an evaluation of the school age child who has been referred and shall write an educational plan for such child. Such evaluation shall be either a full core or intermediate evaluation in accordance with the following:

319.1 The Administrator of Special Education shall decide, based upon the recommendation of and the information provided by the person making the referral, whether a full core or an intermediate evaluation is required, subject to the following:

+319.1 (a) An intermediate evaluation shall be required if, at the time of referral, the referred child is enrolled in a regular education program or is receiving special education in prototype 502.1 or 502.2, unless the parents request a full core evaluation (as specified in paragraph 319.1 (c)) or school personnel recommend that a full core evaluation be conducted.

+319.1 (b) A full core evaluation shall be required in any case in which a child is referred because of the suspected existence of a need for special education services which would require such child to be outside of the regular class for more than twenty-five percent of the time. A CET conducting an intermediate evaluation shall not recommend that a child be outside of the regular class more than twenty-five percent of the time.

+319.1 (c) A full core evaluation shall be required if the child's parents request it. Such parents shall be made fully aware of this right, which must be waived, in writing, before an intermediate evaluation can be administered. Such waiver, however, shall not affect the requirement of a full core evaluation upon the request of the

322.5 The educational plan for a child of ages sixteen through twenty-one who is found to have a need for special education services shall recommend either a program within one of the prototypes listed in paragraph 502.0 or a program that does not fall within any one of those prototypes. In either case the child's educational plan shall be written as required by paragraph 321.0. Where the plan is not within one of the listed prototypes, the school committee must obtain approval of such plan from the Regional Branch Office of the Division.

+323.0 Meeting between parents, the Administrator of Special Education and CET liaison person after completion of the educational plan.

Each school committee shall insure that the parents of each child for whom an educational plan has been written, shall have an opportunity, within fifteen days after it sends the written notice provided for in paragraph 324.0, to meet with the CET liaison person and the Administrator of Special Education to evaluate the adequacy of the plan.

+324.0 Evaluation: Educational plan; notice to parents.

No later than ten days after the CET and the Administrator of Special Education complete the evaluation and educational plan or make a finding of no need for special education services, the school committee shall send a written notice to the parents of such child (or to the child where the child is eighteen years of age of older) containing the following information:

+324.1 A statement that the evaluation has been completed and that the parents have the right to meet with the CET liaison person and the Administrator of Special Education, within fifteen days after the notice was sent, to evaluate the adequacy of the educational plan. The statement required by this paragraph shall contain a notation of the actual date of the fifteenth day of such fifteen-day period.

324.2 A copy of the educational plan or a statement that the child is without need of special education services.

324.3 A statement that all papers relevant to the evaluation, including the texts and results of the actual assessments, are available for inspection by the parents or a designated representative of the parents.

+324.4 A statement that, in the event an educational plan is rejected by the parents, there is a thirty-day required time period, as described in paragraph 400.0, to allow for efforts to resolve differences of opinion through informal discussion; and that during such period, the parents (or the child where the child is eighteen years of age or older) shall have the right to meet with the Administrator of Special Education or the chairperson or any member of the CET, or the entire CET, to try to resolve such differences, and that the CET chairperson or the parents may request assistance from the Regional Branch Office of the Division. The procedures in this paragraph shall be required of each school committee.

324.5 A statement of the specific choices available to the parents (or the child where the child is eighteen years of age or older) listing those options described in paragraph 325.0.

324.6 A list of the names and locations of facilities which are approved for conducting independent evaluations and of the right of the parents to a choice of facilities pursuant to paragraph 327.3.

324.7 A statement detailing the entire appeal process and hearing procedure, including a statement of the placement which will be provided for the child pending the completion of an independent evaluation and of the appeal process in general.

324.8 A form with a self-addressed envelope for the parents to indicate their choice of the options contained in paragraph 325.0. Such form shall:

324.8 (a) State that it must be returned no later than the last day of the fifteen-day period specified in paragraph 324.1.

+324.8 (b) Contain a conspicuous warning that failure to return it on or before that date shall result in the case being investigated by the school committee pursuant to paragraph 208.0.

+324.8 (c) State that rejection of an educational plan or of a finding that the child is without need for special education services shall automatically constitute an appeal to the Division without the necessity of having to separately note such an appeal.

324.8 (d) State that such appeal can be withdrawn or need not be continued if an agreement can be made between the parents (or the child where the child is eighteen years of age or older) and the school committee.

324.9 A second form with a self-addressed envelope for the parents to indicate their choice of the options contained in paragraph 328.0. This form shall contain the same information as that described in paragraph 324.7, including a conspicuous statement that the parents (or the child where the child is eighteen years of age or older) should retain the form should they choose the option contained in paragraph 325.3.

325.0 Evaluation: Educational plan; options available to the parents.

No later than fifteen days after the end of the thirty-day time period provided for in paragraph 400.0, the parents of the school age child who has been evaluated (or the child where the child is eighteen years of age or older) shall exercise one of the following options:

325.1 To agree with the Administrator of Special Education and the CET upon a mutually acceptable plan during the thirty-day period required by paragraph 400.0, and to indicate such agreement on the form provided for in paragraph 324.8, and to send such form to the school committee.

325.2 To accept or reject the educational plan or the finding that the child is without need of special education services by noting such acceptance or rejection on the form provided for in paragraph 324.8 and by sending such form to the school committee.

+325.3 To postpone until the completion of an independent evaluation a decision on the educational plan or on the finding that the child is without need of special education services by noting on such form their decision to postpone their decision and to have an independent evaluation of their child (specifying whether at their own expense or at an approved facility), and by sending such form to the school committee.

+325.4 To reject the educational plan or the finding that the child is without need of special education services by noting on such form such rejection and their intention to have an independent evaluation of their child (specifying whether at their own expense or at an approved facility), and by sending such form to the school committee within the time specified.

325.5 In the case of the options contained in paragraph 325.2 through 325.4, all efforts shall be made to resolve differences of opinion through a process of discussion and mutual agreement upon a suitable educational plan, including one or more meetings, as required, between parents (or the child where the child is eighteen years of age or older) and representatives of the school committee.

+326.0 Placement Pending Evaluation and Appeal.

The following provisions shall apply to placement of school age children pending evaluation and appeal:

326.1 Placement Pending Evaluation

Between the time that a child is referred for an evaluation and the time the school committee receives the choice of options form (described in paragraph 324.8) concerning such child, the school committee shall provide or arrange for the provision of a placement for such child. The nature of such placement shall be determined in accordance with the following:

+326.1 (a) A child who, at the time of referral, was in the regular education program shall remain in the regular education program unless the school committee or the child's parents (or the child where such child is eighteen years of age or older) submit a written statement to the Regional Branch Office of the Division showing that the child's remaining in such program endangers the health or safe of the child or substantially disrupts such program for other children. If such a showing is made, the Regional Branch Office shall approve an appropriate placement for the child.

326.1 (b) A child who, at the time of referral, is in a special education program paid for by the school committee shall remain in that special education program unless the child's parents (or the child where such child is eighteen years of age or older) wish the child to be in the regular education program in which case the child shall be placed in such regular education program; or unless the school committee submits a written statement to the Regional Branch Office of the Division showing that the child's remaining in such special education program or being placed in the regular education program (if requested by the parents) endangers the health or safety of the child or substantially disrupts such program for other children. If such a showing is made, the Regional Branch Office shall approve an appropriate placement for the child.

326.1 (c) A child who, at the time of referral, is not in either the regular education program or a special education program paid for by the school committee shall be placed in an appropriate program as determined by agreement between the school committee and the child's parents (or the child where such child is eighteen years of age or older). When such agreement cannot be reached, the Regional Branch Office of the Division shall select an appropriate program for the child.

326.2 Placement Pending Appeal or Postponement of Decision.

If, pursuant to paragraph 325.0, a child's educational plan or a finding that the child is without need for special education services is rejected, or a decision on such plan or finding is postponed, the school committee shall provide or arrange for the provision of a placement for such child during the ensuing appeal or postponement of decision. Such placement shall begin at the time the school committee receives the choice of options form (described in paragraph 324.8) concerning such child and shall end when a final placement for the child is agreed upon, ordered or otherwise required pursuant to these regulations. The nature of the placement pending appeal or postponement shall be determined in accordance with the following provisions:

326.2 (a) A child who was placed, pending evaluation, in the regular education program shall remain in the regular education program unless the school committee or the child's parents (or the child where the child is eighteen years of age or older) submit a written statement to the Regional Branch Office of the Division showing that the child's remaining in such a program endangers the health or safety of the child or substantially disrupts such program for other children. If such a showing is made, the Regional Branch Office shall approve an appropriate placement for the child.

326.2 (b) A child who, pending evaluation, was placed in a special education program paid for by the school committee shall remain in that special education program unless the child's parents (or the child where such child is eighteen years of age or older) wish the child to be in the regular education program, in which case the child shall be placed in such regular education program; or unless the school committee submits a written statement to the Regional Branch Office of the Division showing that the child's remaining in such special education program or being placed in the regular education program (if requested by the parents) endangers the health or safety of the child or substantially disrupts such program for other children. If such a showing is made, the Regional Branch Office shall approve an appropriate placement for the child.

326.2 (c) A child who, pending evaluation, was not placed in either the regular education program or a special education program paid for by the school committee shall be placed in an appropriate program as determined by agreement between the school committee and the child's parents (or the child where the child is eighteen years of age or older). Where such agreement cannot be reached, the Regional Branch Office of the Division shall select an appropriate placement for such child.

327.0 Evaluation: Independent evaluation.

Where an independent evaluation of a school age child is conducted pursuant to parental request (or the request of the child where the child is eighteen years of age or older) the following shall apply:

+327.1 The parents (or the child where the child is eighteen years of age or older) shall have the right to an independent evaluation which is equivalent to the content of the original evaluation. The parents (or the child where the child is eighteen years of age or older) may, however, have an independent evaluation of less than all of the assessments done in the original evaluation, if such parents (or the child where the child is eighteen years of age or older) are satisfied with any one or more of the assessments which were done. All of the standards and requirements in these regulations which apply to initial evaluations shall also apply to independent evaluations.

327.2 The independent evaluation shall be completed no later than thirty school working days after the date on the form which the parents (or the child where the child is eighteen years of age or older) return to the school committee pursuant to paragraph 325.0.

327.3 Where an independent evaluation is to take place at an approved facility, such facility shall be the nearest (to the place of residence of the child) which is able to complete the evaluation within the specified time period, unless the parents (or the child where the child is eighteen years of age or older) request a different facility, in which case such requested facility shall be used if it is able to complete the evaluation within the specified time period.

+327.4 The results of the independent evaluation shall be forwarded in writing to the CET chairperson. In the case of an independent evaluation obtained at private expense, the parent shall forward such results; in the case of an independent evaluation at an approved facility, such facility shall send a copy of the results of each such independent evaluation to the parents, to the child where the child is eighteen years of age or older, and to the CET chairperson.

328.0 Evaluation: Independent evaluation, acceptance or rejection of original plan.

No later than thirty days after the date on the statement of the results of the evaluations conducted pursuant to paragraph 327.0, the parents (or the school age child where such child is eighteen years of age or older) shall accept or reject the educational plan resulting from the original evaluation by noting such acceptance or rejection on the form provided for by paragraph 324.9 and by sending such form to the school committee.

+329.0 Evaluation: Program provision or further appeal.

Where the educational plan of a school age child in need of special education services has been accepted by that child's parents (or the child where the child is eighteen years of age or older), the child shall be placed immediately in the specified program. Where the parent has decided to reject the educational plan either before or after an independent evaluation, the provisions of Chapter 4 shall be applicable.

330.0 Evaluation: Intermediate Evaluation.

Where an intermediate evaluation is administered to a school age child pursuant to paragraph 319.0, the following shall apply:

330.1 All of the requirements which apply to a full core evaluation shall apply to an intermediate evaluation except for the following:

+330.1 (a) A lesser number of assessments shall be required for the intermediate evaluation than the basic five assessments (paragraph 320.1-320.5) which comprise a full core evaluation, after agreement between the parents and the CET chairperson; provided, however, that the persons required for an intermediate evaluation in paragraph 311.0 shall meet to write the child's educational plan.

330.1 (b) The educational plan which is developed by the intermediate evaluation shall recommend placements only within the prototypes described in paragraphs 502.1 (regular education program with modifications) and 502.2 (regular education program with no more than 25% time out) except for those placements described in paragraph 331.0.

330.1 (c) The personnel involved in the intermediate evaluation shall refer the child for a full core evaluation, either during or after the completion of the intermediate evaluation, if they or the parents deem it necessary and desirable.

+331.0 Evaluation: Intermediate evaluation: emergency evaluation and placement placement upon new residence.

An emergency placement can be made on the basis of an intermediate evaluation. Such placement can be made in the following cases:

331.1 Where a school age child of kindergarten age or older demonstrates repeated instances of dangerously assaultive or self-abusive behavior, such child shall be provided for in the following manner:

+331.1 (a) The child shall be referred immediately by the Administrator of Special Education for an intermediate evaluation which shall be convened the same day and shall recommend no later than the following day, a temporary placement for such child, for a period not to exceed ten days. The school committee shall provide or arrange for the provision of such temporary placement.

+331.1 (b) The parents shall be informed immediately of the child's behavior and shall participate, if possible within the constraints of time, in the placement decision. No such placement shall be made without the prior written consent of the child's parents unless an emergency situation exists, in the opinion of the Administrator of Special Education, which would make prior consent impossible without resulting injury to the child or to others.

331.1 (c) No later than ten days after the decision of the intermediate evaluation, an emergency full core evaluation of the child shall be completed. All of the provisions of these regulations relating to full core evaluations shall apply to such evaluation, except that which establishes a thirty-day time limit for completion of such evaluations.

331.2 Where a school age child's family has moved, and such child was in a special education program in a former community of residence, the school committee with jurisdiction over the child's new residence shall place the child immediately in a comparable special education program upon agreement between the Administrators of Special Education of the new and former communities of residence and the child's parents. If the child is coming from outside of the state, the person from the former community of residence who is most equivalent to the Administrator of Special Education shall be substituted for the Administrator of Special Education.

332.0 Review of the child's progress: Ten-month and annual reviews.

Each school committee shall provide for a review of the progress of each school age child who has been placed in a special education program. Such review of each child's progress shall be completed within ten months after the initial placement of any such child and at least annually thereafter and shall be conducted according to the following:

+332.1 The Administrator of Special Education and the CET which wrote the child's educational plan shall make a careful review of the child's progress based upon progress reports which have been submitted and discussions with the child's teacher, other persons working with the child and, if necessary, with the child. Such Administrator of Special Education and the CET shall determine:

332.1 (a) Whether the child has achieved the goals set forth in the educational plan.

332.1 (b) Whether the child has met the criteria which indicate readiness to enter a less restrictive program as defined in paragraph 321.3.

332.1 (c) Whether the program the child is in should be specifically modified to render it more suitable to the child's needs.

332.2 A written summary of the review conducted pursuant to paragraph 332.0 shall be conveyed to the parents of the child within ten days after such review is completed.

+333.0 Re-evaluation of the child.

Each school committee shall provide, where necessary and to the degree necessary, as recommended by the Administrator of Special Education an the CET after their review of the child's educational progress pursuan to the provisions of paragraph 332.0, for a re-evaluation of each chil whose progress is reviewed pursuant to the provisions of said paragrap 332.0. Such re-evaluation of the child shall take place within the ti intervals specified in said paragraph 332.0.

+334.0 New educational plan.

The Administrator of Special Education and the CET which, pursuant to paragraph 332.0, reviews the progress of a school age child who has be placed in a special education program shall write a new educational pl for such child. Such plan shall be written within the time intervals specified in paragraph 332.0, shall be based on the review of the chil progress and the re-evaluation of the child, and shall recommend that the program the child is in be:

334.1 Continued in a form substantially similar to its current form, with modifications to reflect the child's progress during the previous year.

334.2 Continued in a form which is substantially different from its current form.

334.3 Terminated for such child and that such child be placed in a new program. Where this recommendation is chosen, the person who would be primarily responsible for teaching the child in the new program and the primary person who would be assisting such teacher shall be added to the CET for purposes of writing the educational plan for the child.

335.0 Provisions applicable to children in special education programs as of September 1, 1974

Each school age child who is in a special education program as of September 1, 1974, shall be presumed to be appropriately assigned to said program until an evaluation conducted pursuant to paragraph 335.1 or a review of that child's progress conducted pursuant to paragraph 335.2 indicates that another placement would be more beneficial to that child.

CHAPTER 4 - APPEAL PROCEDURES

+400.0 Efforts to reach a settlement through informal discussion.

In order to encourage informal resolution of differences of opinion over educational plans, there shall be a thirty-day time period for informal discussion. During this period each school committee shall insure that the parents (or the school age child where such child is eighteen years of age or older) shall have the opportunity to meet with the chairperson, or any member of the CET, or the entire CET, to try to resolve such differences of opinion. Every effort shall be made by the parties to disputes over educational plans and placements to resolve differences of opinion through informal discussion. Nothing contained in this chapter shall be construed to discourage resolution of differences between parties through such process of informal discussion. The Regional representative of the Bureau shall encourage and actively participate in such process. The thirty day time period shall begin on the day a copy of the notice that an educational plan has been rejected is received by the Regional representative of the Bureau. Such representative shall send a notice to the parents indicating the ending date of the thirty-day period referred to in this paragraph.

+401.0 Appeal to the Bureau: Hearing process; notice to parents and child.

No later than five days after receipt of a notice indicating that an educational plan or a finding of no need for special education services has been rejected, a school committee shall send a copy of such notice to the Bureau of Special Education Appeals (hereinafter referred to as the Bureau), and to the Regional representative of such Bureau. No later than five days after receipt of such notice, the Bureau shall send a notice to the parents (or the school age child where such child is eighteen years of age or older) and a copy to the school committee. Such notice shall contain the following, in addition to the information required to be in the notice by paragraph 403.0:

+401.1 A statement indicating the right to a hearing. A form and self-addressed envelope shall be enclosed with instructions for requesting a hearing, including the specification of a fifteen-day time period from the date on the notice within which to request a hearing. Such form shall contain a conspicuous warning that failure to request a hearing during the required time period shall constitute a waiver of such hearing.

401.2 A statement indicating the place of the hearing, if requested, and the fact that such hearing shall be scheduled on a calendar for hearings on a chronological basis, as requests for hearings are received, subject to paragraph 402.1 (a).

401.3 A statement indicating that the Bureau will give written notice of the date of the hearing when such date is determined.

402.0 Appeal to the Bureau: Return of notice; scheduling of hearings.

No later than fifteen days after the date on the notice sent by the Bureau pursuant to paragraph 401.0, a parent (or a school age child where such child is eighteen years of age or older) desiring a hearing shall so indicate on the form provided, pursuant to paragraph 401.1, and return such form to the Bureau. No later than five days after receipt of such form the Bureau shall:

402.1 Schedule a hearing date on its hearing calendar. Such date shall be no later than sixty days after the receipt of the form requesting the hearing.

402.1 (a) Hearings shall be scheduled in the order in which requests are received unless, in the opinion of the Division acting through its Regional Branch Office, the needs of the child on whose behalf the hearing is requested, are such that the health or safety of such child, or of other children, would be endangered by a delay. Upon such a showing, the Bureau shall expedite the appeal of such a child.

402.2 Send the written notice described in paragraph 401.3 indicating the date of the hearing; provided, however, that should the hearing calendar be full for the next sixty days after the date of the request form, the Bureau may designate an impartial hearing officer to conduct the hearing. Such designated hearing officer shall comply with all of the provisions of this Chapter.

402.3 Where a hearing is not requested, the hearing officer shall direct that all relevant documents and materials be forwarded by the Administrator of Special Education, and a decision shall be rendered based on such documents and materials, as well as the result of any independent evaluation.

402.4 Hearings shall be held in the region of the Department of Education where the child resides.

403.0 Appeal to the Bureau: Hearings; rights of parents and child; notice to parents and child.

The Bureau shall hold a hearing no later than sixty days after receipt of the request for a hearing on the form provided for in paragraph 401.1. Hearings before the Bureau shall be governed by G.L.c. 30A, and shall be fully described in the notice required by paragraph 401.0 to be sent by the Bureau. In addition, the following provisions shall apply to such hearings and shall also be fully described in such notice:

403.1 The parents (or the school age child where such child is eighteen years of age or older) shall have the right to be represented by a person of their choosing, such as an expert in the area of the school age child's needs, or by an attorney, or by both.

403.2 The parents (or the school age child) shall have the right, pursuant to G.L.c. 71, s. 34D and the regulations promulgated pursuant thereto, to examine all school records pertaining to the school age child, including the written record and clinical history of the evaluation provided by the CET and of any independent evaluation, and any other school records and papers upon which the proposed action may be based.

403.3 The hearing shall not be open to the public.

403.4 The parents (or the school age child where such child is eighteen years of age or older) shall have the right to reject the decision of the hearing officer and to request placement of their school age child in the regular education program. If such placement is requested, the school committee shall provide the school age child with the educational placement chosen by the parents, unless such school committee can make a showing in the Superior Court with jurisdiction over the residence of such child that such placement would seriously endanger the health and safety of such child or substantially disrupt the program for other children. Upon such a showing, such court shall be authorized to place such child in an appropriate educational placement.

403.5 The parents (or the school age child where such a child is eighteen years of age or older) shall have the right to reject the decision of the hearing officer and to appeal to the SAC where the parents (or the school age child where such child is eighteen years of age or older) desire that the child be placed in a special education program and the Bureau has recommended a regular education program, or in a special education program different from that recommended by the Bureau.

403.5 (a) Pending the decision of the SAC the school age child shall be placed in a program in accordance with the provisions of paragraph 326.0.

+404.0 Decision of the Bureau.

The hearing officer shall render a decision no later than thirty days after the completion of the hearing provided for by paragraph 403.0 or, if no hearing was requested, after the expiration of the fifteen-day appeal period provided for in paragraph 402.0. Such decision shall comply with the requirements of G.L.c. 30A, s. 11 and shall contain a specification of one of the following placements:

404.1 The placement recommended by the Administrator of Special Educati

404.2 The placement requested by the parents.

404.3 An alternative placement to that recommended by the Administrator of Special Education or the parents. In the case of a decision which specifies this placement, the Administrator of Special Education and CET which completed the school evaluation shall write an educational plan incorporating the decision of the hearing officer.

+405.0 Decision of the Bureau: Notice to parties.

The decision of the hearing officer shall be in writing and shall be sent, not later than three days after it is rendered, to the parents and to their representative, if any; to the school age child, where such child is eighteen years of age or older; to the representative of such child when such child has had representation separate from that of the parents; and to the school committee and its legal representative, if any. Notice to all parties pursuant to this paragraph shall comply with the requirements of G.L.c. 30A, s.11. The entire record of the proceeding before the hearing officer shall be sent by the Bureau to the SAC where the parents reject the decision of the hearing officer and request placement of their school age child in other than the regular education program.

405.1 A form with a self-addressed envelope shall be included with the notice sent to parents pursuant to paragraph 405.0. Such form shall contain a list of the options available pursuant to paragraph 406.0 and a statement of the information required to be on such form by paragraph 406.3.

406.0 Appeal to the SAC.

No later than fifteen days after the date of the notice sent to the parents pursuant to paragraph 405.0, the parents (or the school age child were such child is eighteen years of age or older) shall exercise one of the following options:

406.1 To accept the educational plan recommended by the Bureau by indicating their acceptance on the form provided for in paragraph 405.1 and sending such form to the Bureau within the time specified.

406.2 To reject the educational plan recommended by the Bureau and to have their school age child placed in the regular education program pursuant to paragraph 403.4 by indicating such rejection and choice of the regular education program on the form provided for in paragraph 405.1 and sending such form to the Bureau within the time specified.

406.3 To reject the educational plan by indicating their rejection on the form provided for in paragraph 405.1 and by sending such form to the Bureau within the time specified. Rejection of the decision of the Bureau shall automatically constitute an appeal to the SAC without the necessity of the parents to separately request such an appeal, unless the school age child is to be placed in the regular education program pursuant to 403.4. The form shall indicate this in a conspicuous manner.

406.4 If the form is not returned within the time specified, the provisions of paragraph 208.0 shall apply.

407.0 Appeal to SAC: Decision

No later than thirty days after the next meeting of the SAC following receipt of the form sent by the parents (or the school age child where such child is eighteen years of age or older) pursuant to paragraph 406.0, the SAC shall render a decision which does one of the following:

407.1 Orders the placement recommended by the Bureau.

407.2 Orders the placement recommended by the Administrator of Special Education and CET where it is different from that recommended by the Bureau.

+407.3 Orders the placement recommended by the parents (or the school age child where such child is eighteen years of age or older).

+408.0 Procedure following the decision of the SAC: Notice to parties.

In rendering its decision, the SAC shall comply with the requirements of paragraphs (7) and (8) of G.L.c. 30A, s.11. Such decision shall be in writing and shall be sent no later than three days after it is rendered, to the parents and to their representative, to the school age child where such child is eighteen years of age or older, to the representative of such child where such child has had representation separate from that of the parents, to the Bureau, and to the school committee and its legal representative, if any. The decision shall specify the following rights and procedures which shall be contained in a notice accompanying the decision:

408.1 That the parents (or the school age child where such child is eighteen years of age or older) can consent to the decision of the SAC, or appeal to the Superior Court.

+408.2 That there is a time period within which such an appeal must be entered.*

+408.3 That pending an appeal to the Superior Court, the child will be placed according to the provisions of paragraph 326.0, pending further order of the Court.

409.0 Appeal to Superior Court.

The parents (or the school age child where such child is eighteen years of age or older) may appeal the decision of the SAC to the Superior Court with jurisdiction over the residence of such child. Such appeal shall be in accordance with the requirements of G.L.c. 30A, s.14. The Superior Court shall be authorized to order the placement of the child in an appropriate educational program.

410.0 Placement of a child where a placement is agreed upon or ordered.

Whenever a placement is agreed upon, ordered or otherwise required pursuant to the provisions of this chapter, such placement shall be made forthwith, without any unnecessary delay.

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*The time period for an appeal to be filed in Superior Court is thirty days after receipt of notice of a final decision.

Guidelines for Special Education Programs and Services in Michigan

Michigan Department of Education

CHAPTER IV - PARENTS RIGHTS

Notice to Parents

RULE 23. BEFORE EFFECTUATION OF AN EDUCATIONAL PLACEMENT, DENIAL OF PLACEMENT OR A CHANGE IN EDUCATIONAL STATUS OF A HANDICAPPED PERSON, THE SUPERINTENDENT OF THE INTERMEDIATE SCHOOL DISTRICT OR CONSTITUENT SCHOOL DISTRICT WITHIN 30 DAYS SHALL NOTIFY THE PARENT, PERSONALLY IN CONFERENCE OR BY CERTIFIED MAIL, CONCERNING THE PLACEMENT OR CHANGE IN EDUCATIONAL STATUS. (R 340.1723, SUB RULE 1)

The term 30 days as used above means 30 calendar days after the educational planning and placement committee meeting.

RULE 23.(A) DESCRIBE THE PROPOSED ACTION, INCLUDING SPECIFICATION OF THE STATUTE OR RULE UNDER WHICH ACTION IS PROPOSED AND A STATEMENT OF THE REASONS THEREFOR, INCLUDING SPECIFICATION OF ANY TESTS OR REPORTS UPON WHICH THE ACTION IS BASED. (R 340.1723 SUB-RULE 1A)

The parents must receive the written recommendations of the educational planning and placement committee. As a minimum, the written recommendations must describe the proposed action, include the rule or rules under which the student is eligible for special education services from R 340.1703 through R 340.1714, contain a summary of the reasons for referral, specify the tests, reports, classroom observations, child guidance clinic(s), behavioral checklists and other diagnostic data upon which determination of eligibility or ineligibility was based.

It is recommended that the date of such reports be included as well as the name of the examiner.

RULE 23.(B) NOTIFICATION SHALL ADVISE THE PARENT OF ALL OPTIONS OF EDUCATION OPPORTUNITIES AVAILABLE TO THE HANDICAPPED PERSON. (R 340.1723 SUB-RULE 1B)

The EPPC should develop a list of alternative programs and/or services based on the educational, social and physical needs of the individual handicapped person and based on diagnostic and other evaluation information.

RULE 23.(C) INFORM THE PARENT OF HIS RIGHT TO CONTEST THE PROPOSED ACTION AT A HEARING, AS DESCRIBED IN RULE 24, BEFORE THE SUPERINTENDENT OF THE INTERMEDIATE SCHOOL DISTRICT OR CONSTITUENT DISTRICT. (R 340.1723 SUB-RULE 1C)

It is strongly recommended that parents be sent a copy of R 340.1724. The superintendent or his designee are responsible for making the parents aware that the rule exists. The parents should seek advice from parent organizations or through their legal counsel if they wish interpretation. It may be helpful to the parent(s) if they can read this chapter of the guidelines so that they are aware of the Department of Education's interpretation of R 340.1724.

RULE 23.(D) INFORM THE PARENT THAT, AFTER THE INTERMEDIATE SCHOOL DISTRICT OR CONSTITUENT DISTRICT HEARING AND LACKING A DECISION BY THE SUPERINTENDENT SATISFACTORY TO THE PARENT, HE MAY BE HEARD BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, OR HIS DESIGNEE, AT A TIME AND PLACE SPECIFIED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, OR HIS DESIGNEE, AND REASONABLY CONVENIENT TO THE PARENT. (R 340.1723 SUB-RULE 1D)

A thorough list of organizations that could assist the parent at the hearing must be provided to the parent. This information must include addresses and phone numbers. A master list should be developed at the intermediate level. Organizations important to each particular case might be checked off for the parents' convenience. The intermediate school district plan should include the master list of organizations, addresses and telephone numbers that could be of value to the parent in interpreting the mandatory legislation, counseling with them about the parents rights under R 340.1724, etc.

Plan Implementation

The EPPC's recommendations may be implemented if: (a) the parents attend the meeting and indicate satisfaction with the recommendations, (b) the parents agree in writing after the EPPC, (c) the parents have attended the EPPC or received a summary by certified mail and do not respond within 7 days of the date of receipt of notice.

It is the responsibility of the superintendent or his designee to find an appropriate placement. If the placement is not consistent with the recommendations of the EPPC or if the parent does not concur with the placement, the parent has the right to appeal.

Requesting a Hearing

The superintendent of the district of residence is required to notify the parents of the procedure for requesting a hearing.

The notice must:

RULE 23.(F) SPECIFY THE FOLLOWING PROCEDURES FOR REQUESTING A HEARING:

(I) IF NOTICE IS GIVEN AT A CONFERENCE WITH THE PARENT, THE PARENT MAY INDICATE SATISFACTION WITH THE RECOMMENDATION AND, IN WRITING, MAY WAIVE THE OPPORTUNITY FOR A HEARING.

(II) IF NOTICE IS GIVEN BY THE SUPERINTENDENT BY CERTIFIED MAIL, THE PARENT DESIRING A HEARING SHALL COMPLETE THE FORM PROVIDED AT THE CONFERENCE AND MAIL IT TO THE SUPERINTENDENT WITHIN 7 DAYS OF THE DATE OF RECEIPT OF NOTICE. CHANGE IN EDUCATIONAL ASSIGNMENT SHALL NOT BE MADE DURING THIS PERIOD.

(III) IF DISSATISFIED, THE PARENT MAY REQUEST A HEARING IN WRITING, ON A FORM PROVIDED AT THE CONFERENCE, WITHIN 7 DAYS OF THE CONFERENCE. CHANGE IN EDUCATIONAL ASSIGNMENT SHALL NOT BE MADE DURING THIS PERIOD. (R 340.1723 SUB-RULE 1F)

The conference as described in part (i) above may take place as part of or after the educational planning and placement committee meeting. Prior to signature, the parent must receive and review the written recommendations of the educational planning and placement committee. Signature of concurrence must be a part of or attached to the committee recommendation.

A certified mail receipt, a receipt signed at the conference, or a receipt signed by the parent after the notice was personally delivered are acceptable documentation of notice. The 7 day period mentioned in part (ii) above starts from the date the receipt was signed. A longer period than 7 days may be given to the parents to complete the form after receipt of the notice if the district desires and if the delay will not harm the child.

RULE 23. THE APPEAL PROCEDURE MAY BE TERMINATED AT ANY POINT UPON RECEIPT OF A WRITTEN STATEMENT FROM THE PARENT THAT THE CONCERNS HAVE BEEN RESOLVED AND THAT CONTINUATION OF THE APPEAL PROCEDURE SERVES NO FURTHER PURPOSE. (R 340.1723 SUB-RULE 2)

The written statement should be attached to the appeal as evidence of termination of appeal.

If the parents should at any time in the future become dissatisfied with the educational placement, the parents should contact the superintendent and request a change in educational status.

Contested Cases

RULE 24. A HEARING CONCERNING A CONTESTED CASE BY A PARENT OF A PROPOSED EDUCATIONAL PLACEMENT OR CHANGE IN THE EDUCATION STATUS OF A HANDICAPPED PERSON SHALL BE CONDUCTED AS FOLLOWS:
(A) A HEARING SHALL BE SCHEDULED NOT LESS THAN 15 NOR MORE THAN 30 DAYS FOLLOWING RECEIPT OF THE REQUEST OF A PARENT. HOWEVER, UPON GOOD CAUSE SHOWN, REASONABLE EXTENSIONS OF TIME SHALL BE GRANTED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, OR HIS DESIGNEE, UPON REQUEST OF THE PARENT OR SCHOOL OFFICIAL. (R 340.1724A)

The 15 and 30 days are calendar days and not school days. An extension may be granted due to parent illness, cancellation because of inclement weather or other good cause.

RULE 24.(B) THE HEARING SHALL BE HELD IN THE LOCAL DISTRICT AT A PLACE AND TIME MUTUALLY CONVENIENT FOR THE PARENT OF THE HANDICAPPED PERSON OR HIS REPRESENTATIVE AND APPROPRIATE SCHOOL OFFICIALS. (R 340.1724B)

A school center close to the parent's home, when possible, would be an obvious place for a meeting.

RULE 24.(C) THE SUPERINTENDENT OF THE INTERMEDIATE SCHOOL DISTRICT OR THE CONSTITUENT DISTRICT, OR A DESIGNEE, SHALL ACT AS THE HEARING OFFICER. (R 340.1724C)

The hearing officer should be a person chosen because of his knowledge of hearing procedures, special education programs and sensitivity to the needs of the handicapped person, parents and educators. The hearing officer should have had no involvement in the situation previously, so as to insure impartiality. The hearing officer should understand the mandatory act and its appeal procedure so as to guarantee a lawful and fair decision. The Michigan Department of Education has circulated a list of 25 persons trained as special education hearing officers to all intermediate school districts. These persons may be appointed by the superintendent. The choice of hearing officers is up to the superintendent.

RULE 24.(D) THE HEARING, UPON REQUEST OF THE PARENT, SHALL BE CLOSED TO THE PUBLIC. (R 340.1724D)

The parent should be notified of their right to have a closed hearing if they so desire. If the parents request a closed hearing, only those persons who are directly involved with the pupil must be invited by the school district to the hearing. The parent has the right to invite individuals to attend the hearing who might speak on behalf of their child.

RULE 24. (E) A STENOGRAPHIC OR OTHER TRANSCRIBED RECORD OF THE HEARING SHALL BE MADE AND SHALL BE AVAILABLE TO THE PARENT OR HIS REPRESENTATIVE. ANY COST BEYOND THE ORIGINAL TRANSCRIPTION COST SHALL BE BORNE BY THE REQUESTING PARTIES. THE RECORD MAY BE DISCARDED AFTER 3 YEARS. (R 340.1724E)

A written record of the hearing must be maintained. The proceedings of the hearing may be taken by a stenographer or the proceedings may be recorded and later transcribed. A copy of the proceedings must be given to the parents at no cost. As soon as possible the transcribed records should be reduced to written form. The record may be discarded three years from the date of the hearing.

RULE 24. (F) THE PARENT OF A HANDICAPPED PERSON MAY BE REPRESENTED AT THE HEARING BY ANY PERSON OF HIS CHOOSING. THE PARENT OR HIS REPRESENTATIVE SHALL: (I) HAVE ACCESS, PRIOR TO THE HEARING, TO ALL RECORDS OF THE INTERMEDIATE SCHOOL DISTRICT OR CONSTITUENT DISTRICT CONCERNING THE HANDICAPPED PERSON. (R 340.1723F(I)

Parents may invite an attorney, clergyman, relative or any other person to represent them or attend the hearing with them.

The parent or his representative must have access to records of the intermediate school district or constituent school district, including the cumulative record file and all clinical and educational records maintained by the school district.

Records from outside agencies, including records from physicians, psychiatrists, and psychologists must be made available to the parents if they pertain to the child or to the case. The school district may, but is not required to, provide copies of records to the parents. The school district must make the records accessible to the parents. School records need not be made available to parents until they request a hearing. It is recommended, however, that the records be made available to parents at all times.

School districts should advise cooperating physicians, community health agencies, etc. that under the provisions of this rule clinical information provided to the school from these agencies become part of the record and may be made available to the parents.

RULE 24. (F) THE PARENT OF A HANDICAPPED PERSON MAY BE REPRESENTED AT THE HEARING BY ANY PERSON OF HIS CHOOSING. THE PARENT OR HIS REPRESENTATIVE SHALL: (II) HAVE THE RIGHT TO COMPEL THE ATTENDANCE OF, AND TO QUESTION, ANY WITNESS TESTIFYING FOR THE INTERMEDIATE SCHOOL DISTRICT OR CONSTITUENT DISTRICT AND ANY OFFICIAL, EMPLOYEE OR AGENT OF THE INTERMEDIATE SCHOOL DISTRICT OR CONSTITUENT DISTRICT WHO MAY HAVE EVIDENCE UPON WHICH THE PROPOSED ACTION MAY BE BASED. (R 340.1724F (II)

Any person employed or working for the constituent district in any capacity who could have information pertaining to the pupil in question must be available at the hearing if the parent requests such presence.

It is the parents' responsibility under the provisions of this section to notify the hearing officer prior to the hearing of any individuals who are employees of the school that they wish to attend. It is then the responsibility of the hearing officer to notify said individuals, that they must attend the hearing in accordance with Rule 340.1724.

RULE 24. (F) THE PARENT OF A HANDICAPPED PERSON MAY BE REPRESENTED AT THE HEARING BY ANY PERSON OF HIS CHOOSING. THE PARENT OR HIS REPRESENTATIVE SHALL: (III) HAVE THE RIGHT TO PRESENT EVIDENCE AND EXPERT MEDICAL, PSYCHOLOGICAL OR EDUCATIONAL TESTIMONY AND OTHER PERTINENT INFORMATION. (R 340.1723F (III))

As described above, the parents may have any person present at the hearing. Costs or fees, if any, related to the attendance of parent representatives are to be paid by the parents. Parents may provide written reports as evidence. Upon receipt of such reports, the hearing officer will include them as part of the official transcript.

Michigan

Special Education Code

Under The Provisions Of
Public Act 198 of 1971

Michigan Department of Education
October 10, 1973

mittee

R 340.1722 Educational placement.

Rule 22 The superintendent of the operating school district is responsible for making a change in th educational status of a handicapped person except where section 340.298c or 340.613 of the Michiga Compiled Laws are applicable in which case the superintendent of the intermediate district is responsible. Notwithstanding any additional proceedings set forth in the intermediate school district plan for special education programs and services, as defined in part 7, the superintendent, as a minimum, shall:

(a) Appoint an educational planning and placement committee.

(b) Request, in writing, parents on a case by case basis to participate as members of the committee in developing a recommendation concerning a change in the educational status of their handicapped offspring.

(c) Direct the committee to recommend regular and special education programs and services, according to the educational, social and physical needs of the individual handicapped persons, based on diagnostic and other evaluative information.

(d) Direct a review at least annually of the programs and services provided each handicapped person and advise the superintendent of the district of residence and the parents of the handicapped person of the findings of that review.

(e) Direct a review of the educational placement of each handicapped person who is receiving special education programs and services on the effective date of these rules, and advise the superintendent of the district of residence and the parents of the handicapped person of the findings of the review within 90 days after the effective date of these rules.

R 340.1723 Notice to parents.

Rule 23 (1) Before effectuation of an educational placement, denial of placement or a change in educational status of a handicapped person, the superintendent of the intermediate school district or constituent school district within 30 days shall notify the parent, personally in conference or by certified mail, concerning the placement or change in educational status. Notification shall:

(a) Describe the proposed action, including specification of the statute or rule under which action is proposed and a statement of the reasons therefor, including specification of any tests or reports upon which the action is based.

(b) Advise the parent of all options of education opportunities available to the handicapped person

(c) Inform the parent of his right to contest the proposed action at a hearing, as described in rule 24, before the superintendent of the intermediate school district or constituent district.

(d) Inform the parent that, after the intermediate school district or constituent district hearing and lacking a decision by the superintendent satisfactory to the parent, he may be heard by the superintendent of public instruction, or his designee, at a time and place specified by the superintendent of public instruction, or his designee, and reasonably convenient to the parent.

(e) Inform the parent of the availability of organization, their addresses, and telephone numbers, to assist the parent at the hearing.

(f) Specify the following procedures for requesting a hearing:

(i) If notice is given at a conference with the parent, the parent may indicate satisfaction with the recommendation and, in writing, may waive the opportunity for a hearing.

(ii) If notice is given by the superintendent by certified mail, the parent desiring a hearing shall complete the form provided at the conference and mail it to the superintendent within 7 days of the date of receipt of notice. Change in educational assignment shall not be made during this period.

(iii) If dissatisfied, the parent may request a hearing in writing, on a form provided at the conference, within 7 days of the conference. Change in educational assignment shall not be made during this period.

(2) The appeal procedure may be terminated at any point upon receipt of a written statement from the parent that the concerns have been resolved and that continuation of the appeal procedure serves no further purpose.

R 340.1724 Hearing.

Rule 24 (1) A hearing concerning a contested case by a parent of a proposed educational placement or change in the educational status of a handicapped person shall be conducted as follows:

(a) A hearing shall be scheduled not less than 15 nor more than 30 days following receipt of the request from a parent. However, upon good cause shown, reasonable extensions of time shall be granted by the superintendent of public instruction, or his designee, upon request of the parent or school official.

(b) The hearing shall be held in the local district at a place and time mutually convenient for the parent of the handicapped person or his representative and appropriate school officials.

(c) The superintendent of the intermediate school district or the constituent district, or a designee, shall act as the hearing officer.

(d) The hearing, upon request of the parent, shall be closed to the public.

(e) A stenographic or other transcribed record of the hearing shall be made and shall be available to the parent or his representative. Any cost beyond the original transcription cost shall be borne by the requesting parties. The record may be discarded after 3 years.

(f) The parent of a handicapped person may be represented at the hearing by any person of his choosing. The parent or his representative shall:

(i) Have access, prior to the hearing, to all records of the intermediate school district or constituent district concerning the handicapped person.

(ii) Have the right to compel the attendance of, and to question, any witness testifying for the intermediate school district or constituent district and any official, employee or agent of the intermediate school district or constituent district who may have evidence upon which the proposed action may be based.

(iii) Have the right to present evidence and expert medical, psychological or educational testimony and other pertinent information.

(g) The decision of the hearing officer shall be based solely upon evidence presented at the hearing. Not later than 20 days after the hearing, the hearing officer should render a decision determining the educational placement or educational status of the handicapped person. The decision shall be in writing and shall be accompanied by written findings of fact and conclusions of law and shall be sent by certified mail to the parent, his representative and the school district superintendent.

(2) A temporary change in educational status of the handicapped person may be made for the period prior to the decision of the hearing officer upon written request to the superintendent of public instruction by the superintendent of the intermediate school district or constituent district. The superintendent of public instruction shall take action in writing within 5 days of his receipt of the request setting forth the reasons therefor and upon notice to the parent. If a request is granted by the superintendent of public instruction, the hearing as set forth in subrule (1) shall be held within the time limits stated in subrule (1).

(3) Any time limitation in this rule shall be construed and applied so as to do substantial justice and may be varied upon approval of the superintendent of public instruction for good cause shown.

R 340.1725. Hearing before superintendent of public instruction, or designee.

Rule 25. If a parent is not satisfied with the decision rendered by the hearing as set forth in rule 24, he may appeal to the superintendent of public instruction for a review of the case. The review may be held by the superintendent of public instruction or his designee who shall not be an officer, employee or agent of the intermediate school district or constituent district in which the handicapped person resides or in which the proposed program and services are to be provided. The deadlines for appeal to and decision by, the hearing officer as set forth in rule 24, shall apply in appeals to the superintendent of public instruction. All records of the school district hearing, including the evidence, shall be submitted to the superintendent of public instruction by the district superintendent for review. The decision of the superintendent of public instruction or his designee may be made entirely from such records, or he may require a full hearing involving all or selected parties in the case, and review the decision de novo. The superintendent or his designee may affirm, reverse or modify the decision of the hearing officer or may remand the matter to the hearing officer for further proceedings.

PART 3. ADMINISTRATION OF PROGRAMS AND SERVICES

R 340.1731. Records.

Rule 31. (1) Records shall be maintained by intermediate school districts, in accordance with the provisions of section 340.298c of the Michigan Compiled Laws, for all handicapped persons including those placed in state and privately operated facilities.

(2) Each record shall include for the handicapped person at least the name, date of birth, sex, racial or ethnic group, type of handicap or handicaps, date of referral, services being rendered, date special education programs or services were initiated and terminated, the name, address and telephone number of the parent and district of residence.

(3) When the residency of a handicapped person changes from 1 intermediate school district to another, the intermediate school district of previous residence shall transfer the records maintained under this rule, to the new intermediate school district upon written request of the intermediate school district of residence and the parent of the handicapped person for whom the record was maintained.

R 340.1732. Designation of residency.

Rule 32. A handicapped person's residence shall be deemed to be in the school district where he resides, except that when the person is under 18 years of age and has been placed voluntarily by a parent in another residence or state operated residential center, the residence shall be that of the parent.

R 340.1733. General requirements.

Rule 33. An intermediate school district, constituent district or other agency shall adhere to the following general requirements for all programs and services for handicapped persons:

(a) Special education classrooms shall have at least the average number of square feet per student as compared to the average number of square feet per student in regular classrooms in the school district. Special education classrooms shall be located in schools housing regular education pupils of comparable

Minnesota

Draft #12
December 23, 1975

REGULATIONS TO INSURE THAT HANDICAPPED CHILDREN AND THEIR PARENTS OR GUARDIANS ARE GUARANTEED PROCEDURES AND SUBSTANTIVE SAFEGUARDS IN DECISIONS REGARDING IDENTIFICATION, ASSESSMENT AND EDUCATIONAL PLACEMENT OF HANDICAPPED CHILDREN.

NOTE: The title is to be changed. Also, Sections I-III must be reviewed for consistency with the new "Education for All Handicapped Children Act" of 1975; Section VI must be reviewed for technical purposes (in order to insure consistency of language with Sections IV and V) and also will hopefully be shortened. Section VII (Surrogate Parents) and Section VIII (General Considerations) are not included as they are being re-drafted to reflect changes mandated by federal or state law and also to insure cooperation and appropriate participation by the Department of Public Welfare.

a Pupil Fair Dismissal Act proceeding, may be related to handicapping conditions, these regulations shall take precedence and be applied and the assessment procedure shall commence.

3. Authority. Pursuant to the authority contained in Minn. Stat. 120.17, the State Board of Education adopts the following policies and regulations relating to the provision of special education and equal education opportunities for handicapped children, provided however, nothing in this section or these regulations shall be construed to limit the applicability of Minnesota Laws regarding education and special education and where in conflict, the Minnesota Statutes shall take precedence.

SECTION III

POLICY

1. Full Service Goal. Each handicapped school age child shall hav access to a free appropriate public education as that term is defined in Section 602 of 20 U.S.C. 1402(18), suited to each child's individual needs and maximizing his or her individual capabilities. It is declared an integral part of the policy of this section that all handicapped children receive the special education necessary to their proper development. All responsible school districts shall provide or cause to be provided a free appropriate public public education, suitable to the individual needs of all handicapped children, regardless of the severity of the child's mental, physical, or emotional disability, or other impairment or handicap. To this end, a responsible school district may provide services to meet the educational needs of its handicapped children of preschool or school age by providing an extended day or year, including an

. extended summer school program.

2. Least Restrictive Alternative. To the maximum extent, handicapped children shall be educated along with children who do not have handicaps and shall attend regular classes. A handicapped child can be removed from a regular educational program only when and to the extent that the nature or severity of the handicap is such that education in a regular educational program cannot be accomplished satisfactorily and there is indication that the child will be better served in an alternative ~~environment~~ program. In making placements, the educational needs of the child shall be determinative and shall be made in accordance with the principle of Least Restrictive Educational Alternative as expressed in the Continum of Service Model (See Appendix A).

3. Physical Facilities. Physical aspects and specification of schools, classrooms, and other facilities for, or likely to be used by handicapped children, shall be designed to meet their special physical, educational and psychological needs. To this end, the state, responsible school districts and all other public or private agencies or entities, constructing, renovating, or repairing facilities, utilizing in whole or in part, public funds, which facilities are expressly intended for or are likely to be used by handicapped children, shall plan, locate, design, construct, equip, and maintain them with due regard for the special capabilities, handicaps and requirements of handicapped children to be accomodated therein.

4. Private Schools. The responsibility of school districts, and the state, to provide a free appropriate public education for handicapped children in not diminished by the availability of

private schools, services and residential facilities.

5. Purchase of Service and Accountability for Local District Purchased Services. The responsible school district shall not purchase educational services for a child from a public or private agency when such service is available or can be made available as a Least Restrictive Alternative, as that term is defined and used in paragraph 2 of this section, within the responsible school district. Whenever a school district purchases special instruction and services for handicapped children who reside in the district, it continues to be the responsibility of the school district and the State of Minnesota, consistent with the provisions of Minn. Stat. 120.17 and 124.32 and these regulations to assure and ascertain that such handicapped child receives the education and related services and rights he or she are entitled to by law, and for compliance with these regulations. When a handicapped child resides outside of his or her local school district of residence, then the host school district, (the district within which the residential facility is located) is responsible for assuring and ascertaining that the child receives the education and related services and rights he or she is entitled to by law and for compliance with these regulations. The child's district of residence shall pay for costs of the child's education in the host school district, with the host school district determining the cost of such program, all in accordance with the provisions of Minn. Stat. 120.17.

6. Accountability to Children and Parents. The responsible

[illegible]

school district shall participate, through its agents or employees in charge of the educational program to which the student is assigned, in periodic conferences with parents or elibible children in order to relate to the parents or eligible child, the progress of the student's educational development; and to make available to the parents or eligible child, in accordance with these regulations and as provided by law, all evaluations, diagnosis, reports, a general description of any tests used to assess the child and other information relevant to the student's educational status and progress. [illegible]

7. Parent Consent. Parents must receive notice prior to the initiation of a formal assessment and prior to placement in a special education program. While the parent has 10 days to respond to these notices, he may consent to the schools proposed action prior to the tenth day. If the parent informs the district in writing that they do not agree with the proposed action, the child shall remain in his current placement until all necessary proceedings have been completed. If the child is entering the school for the first time, he shall be placed in the regular educational program of the school until all necessary proceedings have been completed.

in which case notice and hearing rights belong to the guardian.

5. "School District of Residence" means the local school district of residence of a handicapped child, as provided in Minn. Stat. 120.17.

~~6.~~ "Eligible child" includes all children who are at least 18 years of age, who are not under guardianship. This term is used only for purposes of delineating when children are entitled to notice and hearing rights under this regulation and is not intended to limit or expand the eligibility of a child to a free appropriate public education.

SECTION V

IDENTIFICATION AND ASSESSMENT ~~EVALUATION PROCEDURES~~ and Program Plan Procedures

1. Non-Discrimination. Responsible school districts shall provide procedures for insuring that testing and assessment materials and procedures utilized for the purpose of identification, assessment, ~~classification or~~ and programming for placement, ~~of~~ handicapped children will be selected and administered so ~~as not to~~ that to the extent possible, they will not be racially or culturally discriminatory. Such materials and procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so. The procedures used in assessment should be justified on the basis of their usefulness in making instructional decisions which serve the individual child.

2. Identification of Handicapped Children. Responsible school districts shall ~~provide that~~ develop effective systems for identifying all children residing within their jurisdiction who ~~are~~ maybe handicapped, ~~regardless of the severity of their handicap, and are~~ in need of special education or special instruction and services will be identified, located, and

consistent with these regulations evaluated, and provide for a practical method of determining which children are currently receivin needed special education and related services and which children are not currently receiving such education and services. Handicapped children may be:
Those systems shall be designed to identify:

a. Non-school age children;

b. Non-attending handicapped children of school age;

c. Handicapped persons who are attending school.

(Refer to child study system, Part I, Identification.)

3. Educational Assessment.

a. When an educational assessment must occur. In the following circumstances and prior to any placement in, transfer from or to, or denial of placement in a special education program, the responsible school district shall provide and conduct an educational assessment:

i. whenever a child is being considered for a primary placement in, transfer from or to, or denial of placement in a special educational program;

ii. Whenever a child's primary placement is in a regular educational program, and where as part of this educational program the child is being considered for provision of or the removal of special instruction and services.

ii.
iii. At the request of an official, agent, or employee of a school district; the child or the child's parents; or other perso with appropriate authority, who believes the child to be in need of a placement in or transfer from a special education program or the provision or removal of special instruction and services.

b. When notice is required prior to a formal educational assessment:

i. Notice must be given to the parent or guardian of the student in accordance with the provisions of Section VI Part prior to a formal education and/or psychological assessment.

ii. Actions which do not require prior notice include large group screening, individual student observation within the regular classroom, informal inventories, and consultation between regular and special education personnel.

c. What an educational assessment must consist of: An educational assessment shall be appropriate to the child's presenting problem and may include testing and evaluation of the intellectual, academic, verbal, emotional, perceptual, [illegible], and social abilities of the child performed in accordance with recognized professional standards. The educational assessment shall include but not be limited to assessing and determining the child's:

i. current level of performance;

ii. probable effective learning environments;

iii. need of a program other than or in supplement to the regular education program, appropriately suited to his or her needs;

i~~v~~. the capacity of the regular school educational program to which the child would ordinarily be assigned to accommodate and serve the child effectively and/or what practical
through addition of staff, the utilization support inservice facilitates mod
steps must be taken, ~~through addition~~ of staff, training, facilities,
additional or different supplies, materials or other procedures or special instruction and services to create the capacity to serve the child in the regular school environment.

d. Who shall perform the educational assessment: The educational assessment shall be made primarily within the responsible school district, preferably at the school which the child attends. The officials, employees, or agents of the responsible school district shall be responsible for determining that assessments of children and of school situations shall be conducted by qualified
must include, but not be limited to, appropriate,
~~and competent~~ professionals, ~~which in most cases should be a person(s)~~
special education instruction and services.
qualified to provide, ~~or supervise the provision of special education~~ ~~The responsible school district shall assure that the assessment addresses the child's presenting problem, the educational environment~~ or setting in which the child is placed, including the instructional materials and principles used and the physical facilities appropriate to the child's needs. To the ~~maximum~~ extent
appropriate
~~possible~~ the
have the
assessment shall be conducted by persons who will ~~carry~~ responsibility for implementing the educational program for the child.

4. ~~INDIVIDUAL EDUCATION PROGRAM PLAN BY ...~~
Program Needs Determination and Development

a. ~~General Considerations:~~

i. the individual education plan and program shall provide for coordination of the child's educational program with any related program in the child's residence, performed in whole or

a. Program needs determination. Following an educational assessment, the district shall organize the educational assessment data and other relevant information and reports and review that data in a team process to determine if the student is in need of special education instruction and services. The program needs of the student must be determined through the cooperative efforts of a team of persons which include the special education personnel who performed the assessment, the regular classroom teacher and other appropriate support personnel. The parents, and the student when appropriate, must be invited to participate in this team process. The team meetings should be scheduled at a time convenient to the parents. If the parent does not respond to the invitation to participate following reasonable attempts to solicit that participation, the program plan shall be developed without such participation.

b. Individual Educational Program Plan Development: When the team determines, based on the assessment data and other relevant reports, that the student is in need of special education institution and services, the district shall develop a written individual educational program plan. The plan shall be developed utilizing the team described in a. above. The individual education program plan shall provide for coordination of the child's educational program with related programs in the child's residence, performed in whole or in part by the child's parents or other child care staff or personnel. The doctrine of the least restrictive alternative shall be applied throughout the development and implementation of the education program plan.

What an individual education program plan must consist of:

An individual educational program plan shall be prepared annually and at a minim ~~accordance with recognized professional standards~~ ~~and~~ shall include:

i. A description of the specialized educational needs of the child resulting from the child's handicap as determined by the assessment process;

ii. A ~~consideration~~ description of the primary educational needs of the child based on the ~~description specified in (i) above~~ assessment information;

Delete

~~iii. Specific statements as to the probable optimal types methods, quantities and duration of instruction and services essenti to the child;~~

iv. A statement of the specific types, ~~methods, quantiti~~ location, amount of time, beginning date of service, names and telephone numbers of the spec. ed. personnel responsible ~~and initiation and duration of education, special instruction and~~ prov the the serv ~~services to be provided such child~~; the extent to which such child will be able to participate in regular educational programs; and an estimate of the anticipated duration of ~~any primary~~ the placement in a special educational program;

iii.

~~v.~~ A statement of annual goals and short-term ~~and~~ immediate objectives of the educational program to be provided to the child;

V.

~~vi.~~ Specific statements as to the ~~type,~~ criteria, method and frequency of periodic review of the child's progress in reaching the prescribed educational goals and objectives; and

Vi.

~~vii.~~ Specific modifidation in educational programs, including facilities, staff, training, supplies, materials, or other procedures or special instruction and services which may permit the accommodation and education of the child in a regular classroom setting, or other ~~Least Restrictive Alternatives, in accordance with the provisions of Section 111, Part B.~~ least restrictive alternative.

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e. When notice is required prior to any educational placement, transfer, denial of placement or provision of or removal of special instruction of services:

(1) Notice in accordance with the provisions of Section VI 2 (b) (i) is required whenever a child is being considered for placement in, transfer from or to, or denial of placement in any special educational program.

(2) Notice in accordance with the provisions of Section VI 2 (b)(ii) is required whenever a child's primary placement is in a regular educational program and where as a part of the educational program the child is being considered for provision of or the removal of special instruction and services.

5. Periodic Reviews.

The responsible school district shall perform and complete periodic reviews of the child's program to determine: (1) the degree to which the short-term objectives are identified in the educational program plan are being achieved; (2) the appropriateness and suitability of the educational program plan as it relates to the students current needs; and (3) what modifications, if any, should be made in the educational program plan.

a. The initial review shall be made at the time specified in the educational program plan but not later than 3 months following placement and at least every 6 months thereafter.

b. The responsible school district shall continue to review the status of such handicapped child's progress in accordance with the provisions of the preceding paragraph, provided however that such review shall occur at least every three months during the duration of any primary placement in a special education program and at least annually while the child receives special instruction and service in connection with regular educational placement.

c. These periodic reviews shall be made by those persons directly responsible for implementing the child's educational program, and by other responsible school district agents or employees as may be ~~required~~ needed to insure an impartial, informed and adequate review.

c. Findings and conclusions resulting from such periodic reviews shall be included in the child's school records.

d. The responsible school district or parents may request and receive a conference to review the child's educational program pl at any time.

(a. [illegible] When a student continues to receive special education instruction and vices ove long pe of tim e. The responsible school district shall perform and complete no later than the twelfth month ~~after the initiation of a primary placement in a special education program, or the provision of special instruction and services to a child,~~ as identified in Section V. 3. an educational re-assessment which may include testing and evaluation of the intellec academic, verbal, emotional, perceptual, psychological, and social abilities of the handicapped child, appropriate to the child's presenting problem. This educational re-assessment shall be performed in accordance with the recognized professional standards for the purpose of redetermining the educational program suited to the needs of the child and maximizing his or her individual capabilities.

The re-assessment shall be performed in accordance with the standards set forth in this part.

7. Follow-up review

~~8.~~ The responsible school district shall conduct a follow-up ~~periodic~~ review no later than ~~six~~ twelve months after removal from a special education program or when special instruction and services are discontinued for any child.

SECTION VI
HEARING PROCEDURES

1. General Application

The provisions of this section are to be used in determining issues relating to the following matters:

a. Proposed actions regarding a child's educational placement in or denial of placement in, or transfer to, or from a special education program, or the provision of or the removal of special instruction and service as set forth in these regulations and as required by the "Education for All Handicapped Children Act of 1975".

b. Parental refusal to permit assessments as set forth in these regulations and required by the "Education for All Handicapped Children Act of 1975".

2. Notice Provisions.

a. When notice must be served.

i. Prior to any educational placement, transfer from or to or denial as set forth in Section V, Part 4 (c) notice must be prepared and served by the responsible school district, and the district shall first have conducted an educational assessment and developed a program plan in accordance with the provisions of Section V, Parts 3 and 4.

ii. Prior to an educational assessment as set forth in Section V, Part 3 (b) notice must be prepared and served by the responsible school district.

b. What notice must consist of.

i. For a proposed action regarding a child's educational placement, transfer from or to, or denial of placement in an educational program as set forth in Section V, Part 4 (c) (i) the notice shall:

aa. Include a copy of the specific educational program plan described in Section V, Part 4.

bb. Clearly state: (1-1) the specific and complete reasons for the proposed action, including a specification and general description of any tests, evaluations, diagnosis, reports or other information concerning the educational assessment or reassessment under Section V, Parts 3 and 4 upon which such proposed action is based; (1-2) the names of persons who have taken part in any such tests, evaluations, diagnosis, educational assessment or re-assessment concerning the child, or have made a recommendation concerning the proposed action; and (1-3) the right to receive interpretations of the evaluation, testing, diagnosis, and assessment or re-assessment procedures and instruments from a knowledgeable official, employee or agent of the responsible school district.

cc. Be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action, and the notice, if true and correct, should be sufficient to support a decision to sustain the proposed action.

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dd. Contain a statement as to (1-1) whether or not reasonable and viable alternative educational programs and opportunities, including lesser restrictive educational opportunitic as set forth in the Continuum of Services Model, (See Appendix_______ are available on a permanent or temporary basis; (1-2) whether such alternative educational programs or opportunities were considered, (1-3) and the specific reasons why each alternative was rejected, including a statement as to the relationship of the nature or severity of the child's handicap to such alternative educational programs and opportunities and why such alternatives are not suitabl to or cannot satisfy a child's educational needs.

ee. Inform the parent or eligible child (1-1) that the responsible school district may proceed with the proposed action unless the parent or eligible child objects in writing to the proposed action within seven (7) days after service of the notice; (1-2) of the manner in which to object to the proposed action; (1-3) that if the parent or eligible child objects to the proposed action, a conciliation meeting will be held and the manner and time in which such meeting will be held; (1-4) that if the parent or eligible child fails to appear at and attend the conciliation meeting the responsible school district may proceed with the proposed action, except where the parent or child has the right to waive the conciliation conference as set forth in Section VI, Part 3 (a) and (b); and the manner and time in which to make such waiver; (1-5) that if the parent or eligible child still objects to the proposed action after the final conciliation meeting, or after waiver of the conciliation conference the parent or eligible child has a right to object to the proposed action at a hearing before an impartial hearing officer and the manner and time in which to do so; (1-6) that if no such objection is made, the proposed action may take place; (1-7) that the proposed action will not occur until 7 days after the hearing officer's decision; (1-8) that a record will be kept of the hearing and made available to the parents of the eligible child; and (1-9) a brief description of appeal rights and procedures.

ff. Inform the parent or eligible child that they may obtain an independent educational assessment at their own expense. As part of this notice the responsible school district shall [illegible] [illegible], upon request, will provide the parent with ~~specify~~ the name, address and telephone number of publically funded diagnostic centers or programs at which such educational assessments may be obtained and shall further inform the parent or eligible child that they should contact such centers or programs as the assessments may be free of charge, if the parent or eligible child meets the center or program's eligibility critera.

gg. Inform the parent and eligible child, of their right: (1-1) to be represented at the hearing by legal counsel or other representative of their choice; including specification of the name, address and telephone number of available voluntary legal or advocacy assistance as required by Section VI, Part 3 (c) (ii); (1-2) to examine and receive copies of the child's school records before the hearing, including any tests, evaluations, diagnosis, reports or other information concerning the educational assessment or re-assessment, described in Section V, Part 3 and 4, upon which the proposed action may be based; (1-3) to present evidence, including expert medical, psychological and educational testimony; (1-4) to request the attendance of any official, employee, or agent of the responsible school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so; and (1-5) and to cross examine any school official, employee, or agent of the school district or other persons who present evidence at the hearing.

ii. For a proposed action regarding a child's educational program as set forth in Section V, Part 4 (e) (ii) the notice shall:

aa. Include a copy of the specific educational program plan described in Section V, Part 4.

bb. Clearly state the specific and complete reasons for the proposed action.

cc. Inform the parent or eligible child of the right to discuss the proposed action with knowledgeable officials, employees, or agents of the responsible school district, including a specification of the name and telephone numbers of such appropriate persons;

dd. Inform the parent or eligible child (1-1) that the responsible school district may proceed with the proposed action unless the parent or eligible child objects in writing to the proposed action within seven (7) days after service of the notice; (1-2) the manner in which to object to the proposed action; (1-3) that if the parent or eligible child objects to the proposed action, an individual conciliation conference shall be held and th manner and time in which such conference will be held; (1-4) that if the parent or eligible child fails to appear at and attend the conciliation conference the responsible school district may procee with the proposed action; (1-5) that if the parent or eligible child still objects to the proposed action after the final conciliation conference a second notice (prepared in accordance wi the provisions of Section VI, Part 2 (b) (i)) specifying the addit rights and procedures available to the parent or eligible child, and providing additional information concerning the proposed actio will be served on the parent or eligible child, and the manner and time in which the parent or child must file such written objection (1-6) that if no such objection is made, the proposed action may take place.

iii. For parental refusal to permit assessments as set forth in Section V, Part 3 (b) the notice shall include:

(a-a) the reasons for the assessment and how the results may be used;

(b-b) a general description of the procedures to be used;

(c-c) when, where, and by whom the assessment will be conducted;

(d-d) a statement of the right of the parent to review and receive copies of all records or other written information related to the assessment;

(e-e) a statement of the right to be fully informed of the results of the assessment;

(f-f) an assurance that the child's educational status will not be changed without the knowledge and written approval of the parent, except as provided elsewhere in these guidelines;

(g-g) a statement concerning the parent's right to refuse to permit the assessment and the manner and time in which to do so;

(h-h) a statement indicating that if the parent or eligible child refuses to permit the assessment that an individual conference shall be held and the manner and time in which such conference will be held; and

(i-i) a statement indicating that if the parent or eligible child still refuses to permit the assessment after the individual conference, that the responsible school district may request an impartial hearing, concerning which the parent and eligible child shall have notice of and the right to appear and make their position known, in order to attempt to obtain approval to conduct an assessment;

c. How such notice shall be served and who must receive such notice;

i. Such notice shall be served in writing by certified mail to the parent of the child, or the eligible child.

ii. Whenever the provisions of these regulations guidelines require notice, to the parent, notice should be given to any adult with whom the child is actually living, as well as to the child.

iii. Every effort shall be made by the responsible school district to assure that no child's rights are denied for lack of a parent, or surrogate parent, or duly appointed guardian.

iv. The responsible school district shall make reasonable provisions for such notice to non-readers and non-English speaking persons necessary to insure that the information contained in the notice is understood by the child's parent, the child, or other persons, where required by these Guidelines.

3. Conciliation Conference

a. If the parent or eligible child fails to object in writing, to a proposed action regarding a child's educational program, as set forth in Section V, Part 4 (c) (ii), within seven (7) days after service of the notice, described in Section VI, Part 2 b(ii), the proposed action may take place. If such written objection is made the responsible school district shall arrange for a immediate conference with the parent or eligible child for the purpose of explaining and conciliating the matter. The conference shall be held at a time and place convenient to the parent or child. There may be more than one such conference and no parent or eligible child shall have the right to receive a formal notice prepared in accordance with the provisions of Section VI, Part 2 b (i) or to request a hearing under Part 4 of this Section until at least one conciliation conference has been held. If the parent or eligible child continues to object to the proposed action after the final conciliation conference, they must state their objection in writing to the responsible school district within seven (7) days after such conference. It shall be the duty of the responsible school district at the final conciliation conference to inform the parent or eligible child that if they continue to object to the proposed action that they should refer to the notice prepared pursuant to the provision of Section VI Part 2 (b) (ii) for information concerning the manner and time to make such written objection. If no such objection is made, after the final conciliation meeting, the proposed action may take place. If such written objection is made the responsible school district shall prepare and serve a notice, prepared in accordance with the provisions of Section VI, Part 2 (b) (i), upon the parent or eligible child. Thereafter, the procedure set forth in paragraph b (below) and Part 4, shall apply, except that the parent or eligible child shall have the right to waive, in writing, the conciliation conference described in paragraph b (below).

b. If the parent or eligible child fails to object in writing to the proposed action, regarding a child's education placement, transfer from or to, or denial of placement in an educational program as set forth in Section V, Part 4 (c) (i) or a child's educational program as set forth in Section V, Part 4 (c) (ii) and paragraph a (above) within seven (7) days after service of the notice described in Section VI, Part 2 b (i), the proposed action may take place. If such written objection is made, the responsible school district shall arrange for an immediate conference with the parent or child for the purpose of explaining conciliating the matter. The conference shall be held at a time and place convenient to the parent or child. There may be more than one such conference, and no parent or eligible child, except a parent or eligible child who waives the conference pursua to the provisions of paragraph a (above), shall have the right to request a hearing, under Part 4 of this Section, until at least on conciliation conference has been held. Within seven (7) days of the final conciliation conference the responsible school distri shall provide the parent or eligible child with a written memorand outlining the results of the conference. The memorandum shall also inform the parent or eligible child that if they continue to object to the proposed action that they should refer to the notice prepared pursuant to the provisions of Section VI, Part 2 (b) (i) for information concerning the right to object to the proposed action at a hearing and the manner and time in which to do so. The memorandum shall also inform the parent or eligible child that if they fail to request a hearing in accordance with the provisions of Part 4 (c) (i-iii) of this Section the proposed action may take place.

4. The Hearing.

a. Specific standards and procedures for action to compel and educational assessment.

i. If after notice, as set forth in Part 2 (b) (iv) the parents refuse to give permission for the educational assessment of their child as set forth in Section ________________ the responsible school district shall attempt to seek resolution through an individual conference. Such a conference shall be immediately arranged for by the responsible school district and shall be held at a time and place convenient to the parent. If the parents continue to refuse after the conference to permit the proposed assessment, the responsible school district may request a hearing in accordance with the provisions of paragraph iii.

ii. If the parents fail to respond to the responsible school district's reasonable attempts, by means in addition to regular mail (e.g. telephone, home visits) to obtain written consent for an assessment, then the responsible school district may request a hearing in accordance with the provisions of paragraph iii. At the hearing, the burden of proof is on the school district to demonstrate, in additon to the matters set forth in paragraph iii, that by documentation, it has repeatedly attempted to contact the parents, utilizing efforts that were reasonably calculated to succeed.

iii. The applicable hearing procedures and standards, as set forth herein, shall apply to a hearing under this paragraph, except that at the hearing, the burden of proof is on the responsible school district to demonstrate that there are facts,

relating to the child's performance in his or her present educati
placement, which indicate reasonable grounds to believe that the educational assessment procedures are justified, as the first ste toward a possible change in the child's educational placement or in modification of the child's educational program (as set forth in Section V, Part 4 e (i) and (ii))which will provide an educational program appropriately suited to the child's needs.

iv. After requesting a hearing pursuant to either paragrap i or ii, the responsible school district shall provide notice to the parents or eligible child which specifically describes thei rights to the proceedings as set forth in this Section. Such notice shall be served on the parents or eligible child at least fourteen (14) days prior to the hearing.

b. When a hearing must be held.

i. For a proposed action regarding a child's education placement, transfer from or to, or denial of placement in an educational program set forth in Section V, Part 4 (e) (i) a heari to object to the proposed action shall be held for the parent or eligible child, who, after a conciliation conference conducted pursuant to the provisions of Section VI, Part 3, so requests.

ii. For a proposed action regarding a child's educational program as set forth in Section V, Part 4 (e) (ii) a hearing to object to the proposed action shall be held for the parent and eligible child, who, after notice as provided in Part 2 (b) (ii); a personal conference as provided in Part 3 (a); notice as provide in Part 2 (b) (i); and a conciliation conference (unless waived pursuant to Part 3 (a) and (b)) conducted pursuant to the provisions of Part 3 (a), so requests.

iii. The request referred to in (i) and (ii) above shall be in writing and must be made within seven (7) days after the service of the memorandum referred to in Part 3 of this Section, or in case of waiver of a conciliation conference pursuant to Parts 3 (a) and (b) of this Section, within seven (7) days of the filing of such written waiver with the school district. The request must be filed with or directed to the responsible school district, its officials, employees or agents. If no such request is made the proposed action may take place.

iv. All hearings authorized pursuant to Section VI Part 4 (a)-(c) shall be scheduled by the responsible school district no sooner than fifteen (15) days, waivable by parent and eligible child, but not later than thirty (30) days after receipt of a request for a hearing.

v. Written notice of the time and place of all hearings shall be given to the parent and eligible child and other interested persons by the responsible school district at least ten (10) days in advance of such hearing; and the hearing shall be held at a time and place reasonably convenient to such parent and child.

c. Hearing officers.

All hearing officers shall be mutually agreed to and appointed by the responsible school district and the parent or eligible child and shall be paid for by the responsible school district. If such agreement cannot be reached within ______ days after receipt of a request for hearing, pursuant to Section VI, Part 4 (c), the responsible school district notify the Commissioner of Education who shall appoint the hearing officer. The hearing officer shall be both impartial and informed in the general issues involved and the provision of these Guidelines.

d. Prehearing Review by the Hearing Officer.

i. Five (5) working days prior to the hearing, the hearing officer shall receive copies of (1) the responsible school district's notice and memorandum to the parents; (2) written information concerning the responsible school district educational assessment or reassessment and copies of any tests, evaluations, diagnosis, or reports relating to such assessment or reassessment, or the proposed action; (3) a copy of the responsible school district's educational program plan; and (4) such other information from the responsible school district as the hearing officer may hav requested at a prior date.

ii. Upon receipt of the information set forth in paragraph 1, the hearing officer may review the same for compliance with these guidelines. The hearing officer may, at his or her discretion, meet with the parties prior to the hearing; request the responsible school district to perform a further educational assessment or re-assessment; propose an additional educational program and plan; send additional notice to the parents or eligible child;or may do such additional things necessary to achieve complaince with these guidelines. To achieve the purposes of paragraph 2, the hearing officer may postpone the hearing for up to fourteen (14) working days.

e. Hearing Rights of the Respective Parties.

i. The hearing shall be closed unless the parent or eligible child requests an open hearing.

ii. The parties shall have the right to representatives of their own choosing, including legal counsel. The responsible school district shall inform the parent or eligible child of available voluntary legal or advocacy assistance including, Legal Aid Societies, the Young Lawyer's Section of the Minnesota Bar Association and consumer groups.

iii. At a reasonable time prior to the hearing, the parent and the child or their counsel or representatives, as the case may be, shall be given access to all of the responsible school district records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, diagnosis, reports and other written information concerning the educational assessment or reassessment, conducted pursuant to Section V, Parts 3 through 5, upon which the proposed action may be based.

iv. All parties or their representatives, as the case may be, shall have the right to request the attendance of any official, employee, or agent of the responsible school district or any other person, who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the responsible school district or to the official, employee, or agent or other person whose attendance is requested at least three (3) days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing. Any person, whose attendance is so requested, and who does not appear at the hearing and subject her-himself to such cross examination, such person's testimony or allegations shall not be received into evidence.

v. All parties, and their representatives shall have the right to present all relevant evidence and testimony including expert medical, psychological or education testimony and tests, evaluations, diagnosis, and other reports and documents prepared in the ordinary course of business, as long as such evidence is reliable and trustworthy and has probative value, and is not incom petent, irrelevant, or immaterial, and shall have the right to cross examine all adverse witnesses.

vi. If the hearing officer detemines at the conclusion of the hearing that there remains disputes of fact which in the interest of fairness and the child's educational needs requires th testimony of additional witnesses, or if the hearing officer concl that alternative educational programs and opportunities, as requir by Section VI, Part 2, have not been sufficiently considered, the hearing officer may continue the hearing for not more than ten (10 days, and shall request that the Commissioner of Education (Attorney General or Commissioner of Administration) to the extent provided by law, to compel the attendance of such additional witnesse Copies of the request shall be provided to the parties at least fi (5) days before the continued hearing and the parties right to cro examination and confrontation shall be given full force and effect.

f. Hearing Procedures.

i. The hearing officer shall preside over and conduct the hearing and the decision of the hearing officer shall be based solely upon the evidence received at the hearing.

ii. The responsible school district shall bear the burden of proof as to all facts and as to grounds for the proposed action.

iii. A tape recording verbatim stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to Section VI, Part 4 (i)shall be transcribed by the responsible school district. The recording, record or transcription, as the case may be shall, upon request, be made available to the parent or eligible child or their representative.

g. The Hearing Officer's Decision.

Within 7 days after the hearing, the hearing officer shall prepare written findings of fact, conclusions of law and make them part of the proposed decision. Such decision shall address itself to the following:

i. Based on an application of the standards and principles set forth in this Part and SectionII, the proposed action regarding the child's educational placement, denial of placement, transfer, or educational program, as set forth in Section V, Part 4 (c) (i) and (ii), shall be sustained in whole or in part by the hearing officer only upon clear and convincing evidence.

ii. In deciding if the proposed action is to be sustained, in whole or part, the educational needs of the child shall be determinative. However, there shall be a presumption that among alternative programs of education, that placement in a regular public school class with appropriate special instruction and services or ancillary or supplemental aids or services is preferable to removal from the regular classroom.

iii. The hearing officer may sustain a proposed action that would result in the child being removed from a program of regular education only when, and to the extent that, the nature or severity of the handicap is such that education in a program of regular education cannot be accomplished satisfactorily, and there is indication that the child will be better served in an alternative environment. This decision shall be made in accordance with the principle of least restrictive educational alternatives as expressed in the attached Continuum of Services Model (See Appendix).

iv. The hearing officer shall also determine whether the responsible school district sufficiently considered alternative educational programs and opportunities, as required by Section VI, Part 2, and at the hearing, may receive any additional evidence presented by any interested party or person as to the availability and suitability of reasonable and viable educational alternatives. If the officer concludes that there are no reasonable or viable educational alternatives, the findings shall so state.

v. Consistent with the standards and principles set forth in this Part and Section II above, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed action in order to insure that the child receives the education appropriate and suitable to his or her needs and maximizing his or her capabilities and educational development and/or to direct a cause of action to improve, extend, or support the child in his special educational needs when the child's primary educational placement is in a regular classroom.

vi. The decision shall be filed with the Department of Education and shall be sent by registered mail to the parent or eligible child. The decision shall also include information detailing the parent or child's right to appeal the decision and the time and manner in which to do so.

h. Effective Date of the Action and Appeal.

i. The decision of the hearing officer shall be binding on the responsible school district and the other parties and shall become immediately effective unless the parents or the eligible child, or their representative or responsible school officials appeal the hearing officer's decision within fifteen (15) days of the receipt of the decision. In case of appeal, implementation of the decision shall be delayed pending determination of the appeal, and any reversal or modification of the decision.

ii. An appeal of the hearing officer's decision shall be made in accordance with the provisions of Minn. Stat. Chapter 15 (The Administrative Procedures Act) and other provisions of Minnesota law.

iii. If the responsible school district fails to implement the hearing officer's decision, the parent or eligible child shall have the right, pursuant to the provisions of Minn. Stat. 124.15, to appeal such failure to the State Board of Education. In accordance with the provisions of Minn. Stat. 124.15, the State Board of Education may provide such relief or impose such sanctions necessary to correct any such failure.

MONTANA

SPECIAL EDUCATION

RULES AND REGULATIONS REFERENCE MANUAL

DOLORES COLBURG, SUPERINTENDENT OF PUBLIC INSTRUCTION • STATE CAPITOL • HELENA, MT. 59601

SPECIAL EDUCATION
RULES AND REGULATIONS
REFERENCE MANUAL

August 1975

Office of the Superintendent
of Public Instruction
Dolores Colburg, Superintendent
State Capitol
Helena, Montana 59601

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3.2 Mandatory Establishment of Special Education

The trustees must establish and maintain an appropriate special education program when there are any of the following groups:

1) Ten (10) or more educable mentally retarded children.

2) Seven (7) or more trainable mentally retarded children.

3) Ten (10) or more physically handicapped children.

After July 1, 1979 the board of trustees in every school district must provide or establish and maintain for every handicapped person between the ages of six (6) and twenty-one (21) an appropriate special education program.

Each school district may meet its obligation to serve their handicapped children through their own program, a cooperative program with another school district or through regional services. (See 75-7805 in Appendix A).

If a district has established a regular school program for children five years old, then the district must offer to serve handicapped children at that age.

3.3 Discretionary Establishment of Special Education Programs

The trustees of any district may establish and maintain special education services for handicapped persons, as defined by law, between the ages of six (6) and twenty-one (21). Services for children from birth through six (6) and services to persons from twenty-one (21) through twenty-five (25) need special approval from the Superintendent of Public Instruction. (See 75-7806 in Appendix A).

4. RESPONSIBILITY TO THE HANDICAPPED

4.1 Parental Approval for Placing a Child in a Special Education Program

Parents must be notified whenever a child's educational process is altered from that of a regular student to that of an individual receiving special education services. Before a student may be placed in a special education program of any kind, the parents must either sign a form stating that they understand the adjustment to special education and concur that such an adjustment is in the best interest of their child, or be notified in writing of appeal procedures. A school district may place a child in a special education program without the concurrence of the parents if, before placement, the parents are notified in writing of appeal procedures. The appeal procedure is specified in Section 75-5811 (See Appendix A). The child should also be informed of and understand, if capable, the educational change.

4.2 Parental Approval for Intelligence and Personality Testing

Specialists may observe a child within the regular school environment and do routine screening including behavioral assessment, achievement tests and diagnostic tests without obtaining parental approval. Parents have the right to refuse the use of standardized, individual intelligence tests or personality tests for their child (e.g., Weschler Preschool and Primary Scale of Intelligence, Weschler Intelligence Scale for Children, Weschler Adult Intelligence Scale, Stanford-Binet Intelligence Scale, Children's Apperception Test, Rorschach, Minnesota Multiphasic Personality Inventory). School personnel must obtain written permission before such tests are administered.

4.3 School Records and Confidentiality

Parents may inspect their child's school records including test profiles and reports of intelligence and personality assessments. When parents make a request to inspect their child's records, school officials shall make an appointment for inspection and interpretation within a resonable time. The school district shall provide qualified personnel to make test interpretations and to assist the parents in the inspection of the records. When test profiles and reports are no longer pertinent to the educational needs of the individual, such material should be removed from the individual's file and destroyed.

School records may not be released to an individual or agency without the written consent of the parents if the student is under eighteen (18) years of age or without the written consent of the student if that student is eighteen (18) years of age or over. Exception to the requirement for a written release will be provided by the Superintendent of Public Instruction when the rules and regulations for Public Law 93-380, Section 513 are published in the Federal Register.

4.4 Non-Discriminatory Testing and Evaluation

Each school district must ensure that testing materials and procedures used for diagnosis and placement of handicapped children will be selected and administered so as to minimize racial and cultural discrimination.

4.5 Independent Education Evaluation

The parents of a handicapped child have the right to an independent educational evaluation of the child when those parents have reason to question the appropriateness of the child's educational evaluation and program.

Requests by the parents for an independent evaluation should be made to the district superintendent or the county superintendent when there is not a district superintendent. The parents must state the reason(s) to the district or county superintendent for the independent evaluation. The local school district utilizing special education funds is responsible for the financial expense of the independent evaluation. Advance approval of any contract for an independent evaluation must be obtained from the Superintendent of Public Instruction.

4.6 Surrogate Parents

In order to provide every child eligible for special education with the protection of procedural due process under circumstances when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state, a surrogate parent must be obtained for such children by the local district. The local school district should contact Social and Rehabilitation Services[1] through the child's assigned caseworker for assistance in securing an appropriate surrogate parent. A surrogate parent may not be an employee of the school district.

4.7 Aversive Treatment Procedures

Individual programs involving the use of aversive stimuli (i.e., restraint, schock, seclusion) shall be conducted only with the written consent of the affected student's parents and shall be described by specific behavioral objectives. Chemical restraint may never be used for punishment, for staff convenience or as a substitute for a program. Each use of physical restraint, aversive techniques or environmental seclusion shall be recorded in the student's file. This record shall include

1) description of behavior to be modified;

2) description of precipitating behavior;

3) expected behavioral outcome;

4) actual behavioral outcome;

5) possible secondary effects; and

6) date for review or termination.

4.8 Labeling Students

School districts should not label students, teachers or rooms by medical and special education terms as such practices do not facilitate treatment and are often harmful to the individual labeled.

5. DEFINITIONS

Legal definitions found in school law have been reproduced in Appendix A. "Laws and Federal Regulstions."

5.1 Mentally Retarded

Mentally retarded refers to a person (1) with significant subaverage general intellectual functioning (2) which originated during the developmental period and (3) who does not exhibit acceptable adaptive behavior. All three criteria must be met before a person is so classified. Subaverage general intellectual functioning is regarded as approximately 1.6 standard deviations below the population mean (I.Q. of

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[1] Social and Rehabilitation Services are listed in the phone directory under the County Government Public Welfare Department.

RULE 51

THE STATE DEPARTMENT OF EDUCATION

RULE ON DEVELOPMENT OF REIMBURSABLE LOCAL SPECIAL EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN

This Rule is adopted pursuant to the statutory duty and authority vested in the State Department of Education in Section 43-660 R.R.S. Supp. 1974. "The State Department of Education shall promulgate and publish such rules and regulations as shall be necessary to carry out the provisions of sections 43-604, 43-609, 43-620, 43-625, 43-626, 43-627, 43-627.01, 43-641 to 43-653, 79-202 and 79-444."

Approved by the State Board of Education*
on
April 16, 1975

M. Anne Campbell
Commissioner of Education
233 South 10th Street
Lincoln, Nebraska 68508

* Subject to Approval by the State Attorney General
and
The Governor of the State of Nebraska

3.5

employee of the school district shall meet with the parents or the guardians of the child to inform them of alternative educational programs.

(f) All Contracted Services Including Supportive Services Within the District

(i) The school board and the servicing agency with an approved program shall enter into a contract. The contract shall include in its terms:

(A) A description of the service(s) to be provided

(B) The estimated number of children to be served by verified handicapping condition

(C) A cost schedule for the service(s)

(ii) The school board shall be expected to follow the progress of those children for whom they have contracted. The school district shall maintain a record of supportive data on each child contracted for services. School personnel shall confer with the servicing agency to evaluate the child's progress.

(iii) Placement of a child with an approved servicing agency shall be effected by joint decision of the school board of the child's district of residence and the servicing agency. As with all placements of handicapped children, a statement of approval signed by a parent or guardian shall be on file in the district.

51-(4) IDENTIFICATION OF HANDICAPPED CHILDREN, VERIFICATION BY QUALIFIED PERSONNEL AND REPORTING OF DIAGNOSTIC DATA

(a) Identification of Handicapped Children

Each school board shall identify all children who would benefit from special education services. Prior to referral, school district personnel shall identify the learning problems of the child, develop and implement alternative services within the school, and review the child's progress (screening). Children who may benefit from special education programs shall be referred to professional diagnostic personnel who shall conform to the criteria herein set forth; provided, no child shall be referred for professional diagnosis without written permission of parent or guardian. Referral to professional diagnostic personnel may be made by parental request to the school district or by school district personnel.

(b) Verification by Qualified Personnel

The following appropriate certificated or licensed personnel shall make final verification of each handicapping condition;

3 6

(i) Educable Mentally Handicapped--psychologist

(ii) Mentally Retarded--psychologist

(iii) Specific Learning Disability--psychologist or resource teacher reviewed by psychologist

(iv) Emotionally Disturbed--psychologist or psychiatrist

(v) Defective in Speech--speech clinician or speech pathologist

(vi) Acoustically Handicapped--otologist or audiologist

(vii) Orthopedically Handicapped--physician

(viii) Visually Handicapped--physician or optometrist

(ix) Homebound--physician

(x) Multihandicapped--diagnosis by personnel qualified to diagnose each component handicapping condition. See 43-601, 43-629, 43-630, 43-631 and 43-632, R.R.S. 1943.

(c) Reporting of Diagnostic Data

(i) Each school board shall provide as accurately as possible information on each child. Diagnostic data shall be submitted on "...forms provided by the State Department of Education..." (43-6[illegible]3) The provided forms shall include the following:

(A) name, birthdate, sex

(B) county and district of legal residence

(C) program attended

(D) type of handicaps

(E) types of services received

(F) diagnostic information, date thereof

(G) certification of the data by an officer of the school board or a district employee designated and authorized by the board.

(ii) These forms must be updated and submitted as requested to the State Department of Education at least two times per year. In compliance with this requirement, a school district may use form SPED-NH or a facsimile thereof.

(iii) Those children who were previously identified and served and have progressed beyond needing additional special education services should not be reported to the State Department of Education.

.51-(5) PLACEMENT OF HANDICAPPED CHILDREN

(a) Requirements for Placement

(i) School boards shall authorize placement of children in special education programs; provided the three following requirements have been met:

(A) Consultation with parent or guardian,

(B) Consultation with child's most recent teacher if the child was previously enrolled in school,

(C) Diagnosis and recommendation by appropriate licensed or certificated professional diagnostic personnel.

(ii) A written report of the results and recommendations leading to the placement shall be kept on file in the district of residence.

(b) Approval by Parent or Guardian

(i) When the educational plan for the child involves an initial placement in a special education program or supportive service, the parent or guardian shall receive notification of such determination prior to the proposed placement. Such notification shall be by letter containing a written statement of the school's placement decision.

(ii) When a parent or guardian is advised and concurs with the placement decision, placement in a special program or service shall occur. A statement of approval signed by a parent or guardian shall be on file in the district.

(iii) When special education placement has been authorized, the transition into the special education program shall be implemented.

(iv) A school district may make a temporary placement with written approval of parent or guardian in a special education program not to exceed ten (10) school days for the purpose of observation and evaluation.

(c) Annual Review and Notice to Parent or Guardian

(i) The educational progress and need for continued placement of each child in special education shall be reviewed annually and be on file at the district of residence.

(ii) Notification of continued, modified or terminated placement of a child in a special education program shall be communicated to the parent or guardian.

(d) Requirements for Placement for Homebound and Hospital Programs

The placement of children in homebound and hospital programs shall be based on the following criteria:

(i) The amount of instructional or supportive service time provided through the home and hospital program shall be determined in relation to each child's educational needs for his physical health as determined by a physician.

(ii) A child who requires a home and hospital program shall be provided with instructional services sufficient to enable him to return to school with a minimum of difficulty. Direct instructional time shall not be less than five (5) hours per week unless otherwise stipulated by a physician.

(iii) The school district shall not utilize the home and hospital program to avoid its responsibilities to establish in-school programs nor to eliminate children from the school program.

51-(6) REVIEW OF EDUCATIONAL PLACEMENT

(a) Right of Review, Notification, Accessibility of Record

(i) The right to review the educational placement of a handicapped child shall be available to the parent or guardian. This may include a child for whom the school has recommended special education placement, a child who has been declared ineligible for special education services, a child whose needs have been identified outside the educational system, a child whose parent or guardian believes that the child requires special education services, or a child who is assigned to a special education program when the child is not handicapped.

(ii) The parent or guardian of the child denied placement in a special education program shall be promptly notified of such denial in writing. Such notice shall contain a statement informing the parent or guardian that he is entitled to a review of the determination and of the procedure for obtaining such review.

(iii) A request for a review of the educational placement of a child shall be made to the superintendent of the school district or secretary of the school board wherein the child resides. Such a request shall be transmitted to the school board of the district for adjudication.

(iv) The parties to the review shall be given at least five (5) calendar days' notice of a conference date.

(v) When a parent or guardian believes the diagnosis of the child as shown in the records to be in error, he may secure an independent diagnosis of the child and shall have the right to have the report presented as evidence in the proceedings.

(vi) The parent or guardian and their representatives shall have access to any reports, records, clinical evaluations or other materials concerning the placement of a child kept in the local school district files, upon which the determination to be reviewed was wholly or partially based or which reasonably could have a bearing on the accuracy of the determination. In any review proceeding, the child who has reached the age of majority, parent or guardian, or parent designee and their representative shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person, and to receive a transcript of the proceedings, provided, that nothing in this Rule shall be construed to require disclosure of confidential communications between the examiner and the child examined.

(b) Local Appeal Procedures

(i) The adjudication shall be in the form of a conference between the parent or guardian and their representatives and designated school district personnel.

(ii) When the parent or guardian is unable to speak or understand the English language, an interpreter shall be provided at no expense to the parent or guardian. All correspondence shall be translated into the language of the parent or guardian. When the parent or guardian is deaf, an interpreter shall be employed.

(iii) At the review, representative of the school district shall first present their findings and the reason for the proposed placement. This presentation may include verbal reports, the written record of the educational plan, and any other information deemed relevant. The parent or guardian and their representatives may question school personnel about the information which has been presented. The rules of evidence shall not apply to the conference.

(iv) The parent or guardian and their representatives may then present apprppriate witnesses, reports of tests, and other facts which they may deem relevant. School district personnel may subsequently question the parent or guardian and their representatives.

(v) A typewritten record of the review shall be made by a court reporter who shall be paid by the district. In lieu of a court reporter, a tape recorder followed by a typewritten transcript may be used. The school district representative and the parent or guardian must sign the typewritten transcript.

(vi) After considering the facts as presented at the review, the school district officials shall recommend to the parent or guardian an affirmance of the placement decision, a denial of the request for change in placement, or alternative procedures to meet the educational needs of the child which may include further evaluation. Such decision shall be communicated to the parent or guardian by certified mail within two weeks.

(vii) The notice of the decision shall also inform the parent or guardian of their rights to a review of the placement decision by the State Department of Education.

(viii) No change in the program assignment or status of a handicapped child shall be made within the period afforded the parent or guardian to request a further hearing except that such change may be made with the written consent of the parent or guardian. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made but without prejudice to any rights that the child and his parent or guardian may have pursuant to law.

(c) State Level Appeal Procedures

(i) The request for a state-level review must be made in writing to the superintendent of the school district or president of the school board who shall immediately submit the report to the State Department of Education.

(ii) Upon the receipt of the request for a state-level review of an educational placement, the State Department of Education shall designate one of its employees as a special reviewing officer.

(iii) After the receipt of a request for a state-level review, the school district shall submit a transcript of the review proceedings, to include copies of all documents introduced at the review, to the parent or guardian and to the State Department of Education within seven (7) calendar days of the request for review.

(iv) The review shall be held within ten (10) calendar days of the receipt of the transcript. A report of the review shall be submitted to the Commissioner of Education who with the State Board of Education, shall decide the matter within forty (40) calendar days of the date that the transcript is received. The State Department of Education may dismiss any review deemed lacking in substance.

(v) The reviewing officer shall examine the placement based upon a study of the transcript and may request further information, either by oral testimony or in writing. The reviewing officer may also request technical assistance.

(vi) The school district shall be responsible for implementing the decision of the State Department of Education.

(d) Statutory Authority

"The parent or guardian of any child who believes that child is not in an apporpriate educational program may file a written appeal to the State Department of Education. The State Department of Education shall review the facts in all such cases and determine whether the child is in an appropriate educational program. If the State Department of Education shall determine that the educational program is not appropriate for such child it shall assist the school district of which the child is a resident in placing the child in an appropriate education program. If the State Department of Education determines that the child is in an appropriate educational program, the parent or guardian shall be notified in writing of such findings and the basis thereof." (43-652)

51-(7) SPECIAL EDUCATION PERSONNEL QUALIFICATIONS

(a) Qualifications for Instructional Personnel in School Districts

(i) Instructional personnel shall hold a valid Nebraska Pre-Standard, Standard or Professional Teaching Certificate or a Special Services Certificate and, in addition, be endorsed in the assigned area, or

(ii) Where endorsed teaching personnel are not available they shall hold a valid Nebraska Pre-Standard, Standard or Professional Teaching Certificate or a Special Services Certificate, and in addition be pursuing an endorsement in the assigned area by completing the following:

(A) By September 1, 1975, shall have completed 25% of the requirements for endorsement

(B) By September 1, 1976, shall have completed 50% of the requirements for endorsement

(C) By September 1, 1977, shall have completed 75% of the requirements for endorsement

(D) By September 1, 1978, shall be fully endorsed

STANDARDS AND INSTRUCTIONS FOR ADMINISTRATION OF EXCEPTIONAL PUPIL EDUCATION PROGRAMS

Kenneth H. Hansen
Superintendent of Public Instruction
Nevada State Department of Education

Larry D. Davis
Jane LoCicero
Education Consultants
Exceptional Pupil Education
Division of Educational Services

AMENDED
November 15, 1973

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DUE PROCESS STANDARDS FOR HANDICAPPED EDUCATION

1. The local school district shall advise the child's parents or guardians of their right to request and obtain a fair and impartial hearing on the proposed placement or non-placement in handicapped education and make provision for said hearings. The State Superintendent of Public Instruction, upon request from the local district, shall appoint an impartial Hearing Officer.

2. The following procedure is to be followed if the parents or guardians request a hearing:

   (a) The parents or guardians shall be notified, by certified mail, of the time and place of the hearing within thirty (30) days of the receipt of the request. The hearing shall not be held sooner than twenty (20) days from the date of mailing the letter. This twenty (20) day period is waivable by the mutual agreement of the parties.

   (b) The notice shall include the reasons why the local district feels the child's best interest can be served by the recommended placement or non-placement in handicapped education.

   (c) The notice shall advise the parents or guardians that they may be represented by counsel, may cross-examine witnesses, and may present witnesses.

   (d) The notice shall advise the parents or guardians of their right to examine all pertinent school records prior to any hearing.

3. The hearing shall be at a time and place mutually convenient to the parents or guardians and the school district.

4. The decision of the Hearing Officer shall be based solely on the evidence presented at the hearing.

5. The burden of persuasion as to the reasons for the recommended placement or non-placement in handicapped education shall be on the school district.

6. The Hearing Officer shall render his decision, in writing, within ten (10) days after the hearing.

7. The local school district shall pay the expenses of the Hearing Officer.

NEW JERSEY

State of New Jersey
DEPARTMENT OF EDUCATION
225 WEST STATE STREET
P.O. BOX 2019
TRENTON, NEW JERSEY 08625

September 10, 1975

To: Superintendents of Schools
Administrative Principals
County Superintendents
Child Study Supervisors
Regional Coordinators

Re: Revision of Special Education Rules and Regulations

This is to advise you that the State Board of Education at its August 6, 1975 meeting, adopted the revised State Board rule pertaining to Special Education, pursuant to NJSA 18A:46-1 et.se

These changes will bring the Administrative Code in conformity with the Federal law requirements under E.S.E.A. P.L. 93-380.

The Department of Education appreciates your interest and commen during the period of development of these rules and anticipates your full cooperation in their implementation.

James W Richardson
James W. Richardson, Director
Bureau of Special Education Services

JWR:iw
Att.

a. An impartial due process hearing may be requested by the school district, the parents, other persons having primary care, custody or educational responsibility for the child. ~~or the child himself being of legal age.~~

(1) If the parent or other person as described above requests the hearing, they shall do so in writing to the BOARD OF EDUCATION AND THE superintendent and state the reason the hearing is being requested. The superintendent shall provide a copy of the request to the administrative head of the school or agency providing the program to the child.

(2) If the hearing has been requested by someone other than the child's parents -

(a) the parents shall be informed in writing of the request, the reason for the request and shall be invited to participate in the proceedings.

(b) ~~Thereafter, unless the parents indicate that they do not wish to be informed and/or involved in the hearing process.~~ All communication from the ~~local~~ school district and the hearing officer, shall be directed to both the person requesting the hearing and the parents.

(3) ~~Within five (5) days of receipt of~~ UPON RECEIPT OF A request for a hearing, the superintendent will contact the impartial hearing officer mutually selected by the superintendent and the parent and ~~request that~~ the impartial hearing ~~be scheduled.~~ SHALL BE CONDUCTED WITHIN 40 DAYS UNLESS OTHERWISE AGREED.

(a) If the parents and the superintendent cannot agree upon an impartial hearing officer, the State Department of Education shall appoint one.

(b) If an agency directly affected by a placement decision objects to such decision, an impartial hearing officer appointed by the school district and the objecting agency from a list prepared by the State Department of Education in consultation with the Department of Mental Health and Mental Retardation shall conduct a hearing to review the placement decision.

b. The impartial hearing officer shall be responsible for providing written and also oral notification where appropriate to the parents and the ~~local~~ school district regarding the time and place for the hearing.

(1) This notification shall be sent by certified mail not less than ten (10) days prior to the hearings.

(2) The notification to parents shall be written in English and in the ~~primary-home-language~~ NATIVE LANGUAGE OF THE HOME if other than English.

(3) The notification to parents shall inform them that:

(a) Prior to the hearing, they may have access to all school records regarding the child, and, if they wish, they may obtain copies of these records at the actual cost of the copying.

(b) They may designate, in writing, a person who would have similar access to the child's records and an opportunity to obtain copies of these records.

(c) Prior to the hearing, parents may request an independent evaluation of the child at their own expense. The hearing officer may consider this request an extenuating circumstance and thereby authorize an extension of time for the hearing date.

(d) They may require the attendance at the hearing of any officer, employee or agent of the educational agency who may have evidence or testimony relevant to the needs, abilities, or proposed program.

(e) They may bring representatives, including legal counsel, agency representatives, or others, to the hearing. These persons shall be given an opportunity to participate in the hearing process according to procedures established by the impartial hearing officer.

(f) The educational status of the child will not be changed unless the hearing officer decides that the health and safety of the child or others would be endangered. In such a case, the superintendent shall state in writing the reasons the emergency situation exists and shall be responsible for developing an appropriate interim placement.

~~c. If the district fails to respond to a request for an impartial due process hearing, or refuses to take action, the parents, other persons having primary care and custody of the child, or the child himself may appeal the decision directly to the State Board of Education.~~

~~d. The hearing may be terminated at any time by mutual agreement of all parties involved.~~

c. ~~e.~~ Parents who believe that data collected, maintained or used for educational decisions regarding their child is inaccurate or misleading, or violates the privacy or other rights of the child, may request the agency which maintains the data to make appropriate amendments to the data.

(1) The agency shall decide whether or not to amend the data in accordance with the request and shall inform the parents of the decision within a reasonable period of time. If the agency decides to refuse to amend the data in accordance with the request, it shall advise the parents of the right to an impartial due process hearing. Such hearing shall be conducted in accordance with the procedures described in this section of Standards, including appeal to the State Board of Education.

(2) If, as a result of the hearing or appeal, it has been decided that the data is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the agency shall inform the parents of the right to place in the records it maintains on the child, a statement commenting on the data and setting forth any reasons for disagreeing with the decision.

(3) Any explanation placed in the records of the child under the preceding paragraph shall be maintained by the agency as part of the record of the child as long as the record or contested portion thereof is maintained by the agency, and if the records are disclosed or the contested portion thereof is disclosed to any party, the explanation shall also be disclosed to the party.

d. ~~f.~~ Procedures to be followed during the impartial due process hearing.

(1) The hearing officer shall preside and shall conduct the proceedings in a fair and impartial manner so that all parties involved shall have an opportunity, and be encouraged to present their evidence and testimony.

(2) The parent and the superintendent may bring representatives or others to the hearing. Each shall have the right to a full and complete listing of persons the other party will have at the hearing. The hearing officer shall also have a list of persons from both parties at least five days prior to the hearing.

~~(3) The hearing shall be open or closed to the public at the discretion of the impartial hearing officer.~~

(3) ~~(4)~~ The parent and the superintendent, or their representatives, shall have the right to present evidence and testimony.

(4) ~~(5)~~ The parent and the superintendent, or their representatives, shall have the opportunity to confront and question all witnesses at the hearing, and present evidence.

(5) ~~(6)~~ It will be left to the discretion of the hearing officer whether a child under 18 may be permitted to attend the hearing or parts thereof.

(6) ~~(7)~~ The burden of proof as to the adequacy and appropriateness of the proposed course of action shall be upon the superintendent.

(7) ~~(8)~~ A written or electronic verbatim record of the hearing shall be made.

  (a) The school district shall provide one copy of the written or electronic record to the parent on request.

  (b) The transcript shall be considered confidential information and all necessary procedures to protect confidentiality will be followed.

  (c) The State Board of Education shall have access to this transcript as well as to relevant documentation if the decision of the hearing officer is appealed to review by the State Board of Education.

(8) ~~(9)~~ At all stages of the hearing, interpretation for the deaf and interpretation of the primary language of the home shall be provided when necessary.

f. ~~g.~~ A written summary of the facts and findings of the impartial hearing officer will be sent by certified mail to the parents, the superintendent, and to any other agency involved in the hearing, not more than ~~fifteen (15)~~ twenty (20) days following the hearing.

  (1) The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.

  (2) The summary of the findings and recommendations of the impartial hearing officer shall be written in English and in the ~~language normally spoken by the parents~~ NATIVE LANGUAGE OF THE HOME if other than English.

  (3) Included in the summary will be any material or statements specifically requested to appear in the record by any of the parties.

  (4) The decision shall include a statement of the procedures necessary to obtain an appeal for review of the impartial hearing officer's decision by the State Board of Education and information regarding the opportunity for civil court appeal.

  (5) The decision shall be binding on all parties. If the case is appealed, the decision of the hearing officer shall be adhered to pending outcome of the appeal unless specific waiver is obtained FROM THE IMPARTIAL HEARING OFFICER.

g. ~~h.~~ Costs incurred in the impartial due process hearing procedure will be assumed by the school district of the child's residence except in the following cases:

(1) The parties requesting an independent evaluation shall assume the cost of such evaluation.

(2) Expert testimony, outside medical evaluation and attorney fees will be paid for by the party requesting such services.

(3) Cost of the verbatim transcript of the hearing will be paid for by the school district. One copy of this transcript will be made available to the parent upon request. Additional copies will be paid for by the parents.

(4) When an agency requests an impartial due process hearing as described in Sec. 3323.04 Ohio Revised Code, the agencies that are parties to this hearing shall divide the costs of such hearing equally.

h. ~~i.~~ Selection of Impartial Hearing Officers

(1) No impartial hearing officer will be an employee of the school district or other educational agency involved in the education or care of the child whose educational program is in question.

(2) A list of approved impartial hearing officers will be developed and maintained in each school district or on a cooperative basis with other school districts.

(3) Once the impartial hearing officer has been designated, his or her responsibilities shall be as follows:

(a) Contacting the principle parties in order to establish a mutually agreeable date and time for the hearing.

(b) Requesting appropriate written materials regarding the case from the principle parties.

(c) Sending the principle parties notice regarding the format for the presentation of material.

(4) Training of hearing officers will be provided through the Ohio Department of Education.

6. State Level Review: Any party aggrieved by the findings and decision rendered in the impartial due process hearing as described above, may appeal to the State Board of Education which shall review the case and issue a final order.

a. An appeal for review of the decision of the impartial hearing officer may be initiated by the parents, the superintendent, or other educational agency to the appropriate State Board of Education official within ~~ten (10)~~ TWENTY (20) days of receipt of the impartial hearing officer's decision.

(1) When the superintendent wishes to appeal to the State Board of Education, the superintendent shall be responsible for notifying the parents in writing of the intent to make such an appeal and provide the parents a copy of all information being sent to the State Board of Education.

(2) The parents shall be advised of their right to send to the State Board of Education information other than that sent by the superintendent provided that the superintendent is given a copy of the same information.

b. Upon receipt of a request for a state-level review, the State Board of Education shall consider the appeal based upon a study of materials provided by the superintendent and the parents.

(1) The State Board of Education may request further information, either by oral testimony or in writing, and whatever technical assistance is deemed necessary.

(2) The State Board of Education shall issue a final order within ~~30~~ 60 days of receipt of the appeal unless requests fo further information have necessitated an extension of time.

(3) Copies of the State Board of Education's decision written in English and in the primary home language of the parents if other than English, shall be sent by certified mail to the superintendent, the parents, and to the hearing officer who chaired the local impartial due process hearing.

(4) The decision of the State Board of Education shall be binding on all parties and subject only to judicial review.

(5) The superintendent of the school district where the child resides shall be responsible for implementing the decision of the State Board of Education.

7. Appeal to the Courts: Any party aggrieved by the final order of the Stat Board of Education may appeal the final order to the Common Pleas Court o the county in which the child's school district of residence is located under the provisions of Chapter 119 of the Revised Code.

E. Confidentiality of Data

1. Data Control

a. The school district or other educational agency shall develop and implement policies and procedures to protect the confidentiality of personally identifiable data at collection, storage disclosure and destruction.

b. The administrative head of the school district or other educationa agency shall assign one official of the agency to be responsible for assuring the confidentiality of any personally identifiable data.

c. All persons collecting, maintaining, using or otherwise having access to personally identifiable data shall be informed of the agency's confidentiality policies and procedures.

d. The agency shall maintain, for public inspection, a current listing of the names of those employees within the agency who may have access to the personally identifiable data.

2. Destruction of Data

a. The agency shall destroy all personally identifiable data within five years after the data is no longer needed to provide an educational program or services to the child, except that a permanent record consisting of the following data may be maintained without time limitation:

(1) CHILD'S NAME, ADDRESS, AND PHONE NUMBER.

(2) BIRTHDATE

(3) CHILD'S GRADES AND CLASSES ATTENDED.

(4) ATTENDANCE RECORD INCLUDING BUILDINGS ATTENDED.

(5) CHILD'S GRADE LEVEL COMPLETED AND YEAR COMPLETED

b. Prior to destruction of data, reasonable efforts shall be made by the agency to notify parents that they have the right to be provided with a copy of any data which has been obtained or used for the purpose of making educational decisions regarding their child. A ~~registered letter~~ CERTIFIED LETTER, RETURN RECEIPT REQUESTED, to the last known address shall constitute reasonable effort.

NEW JERSEY ADMINISTRATIVE CODE
Title 6
Subtitle F. Division of Curriculum and Instruction
Chapter 28. Special Education

Authority: N.J.S.A. 18A:46-1 et seq.

SUBCHAPTER 1. GENERAL PROVISIONS

6:28-1.1 Introduction

N/C

6:28-1.2 Handicapped child

N/C

6:28-1.3 Study team

N/C

6:28-1.4 Classification conference

N/C

6:28-1.5 Members of study group

N/C

6:28-1.6 Classification use

N/C

6:28-1.7 Reports

N/C

6:28-1.8 Identification

N/C

9 Parental Notification and Participation

(a) The identification, evaluation and classification procedures shall include provisions for parental notification and participation.

(b) The word "parent" shall hereinafter include parents, guardians, and parent surrogates.

(c) Identification: The parent shall be notified in writing in the dominant language of the home when a child has been referred to a basic child study team for evaluation. Such notification shall state the reasons for the referral and shall contain a statement of the parent's rights to challenge the referral as set forth at N.J.A.C. 6:28-1.10 and 1.11.

(d) Evaluation: The public school district shall request that the parent provide information to the basic child study team to be utilized as part of the evaluation data considered in the classification process.

(e) Classification, Educational Plan and Program: The chair-person of the basic child study team or designee shall inform the parent of the classification, educational plan and educational program it recommends at a conference prior to their implementation. A summary of the classification, educational plan and educational program shall also be provided the parent in writing in the dominant language of the home.

(f) Notification of Right to Administrative Review Process and/or Hearing: At the conference and in writing the parent shall be informed of the right to dispute the classification, educational plan and educational program and to invoke the mediation process described in N.J.A.C. 6:28-1.11(c) or the hearing described in N.J.A.C. 6:28-1.11(d).

6:28-1.10 Parents' and Pupils' Rights

(a) All identified pupils shall be provided an evaluation by the basic child study team to determine if they are handicapped and in need of special education programs as a prerequisite to any board of education action on exclusion from the public school.

(b) Parents of pupils attending public schools, who have been identified pursuant to N.J.A.C. 6:28-1.9 (c) (1), shall be provided copies of the law and the regulations relating to the handicapped by the local school district. [and shall be fully informed of the procedures to seek redress for any issue arising under said law or regulations by which they feel aggrieved.]

(c) Parents who challenge the findings of the child study team have the right to request an independent educational evaluation of their child from the Branch of Special Education and Pupil Personnel Services, State Department of Education. The Department of Education shall provide, without cost to the parent, all necessary professional evaluation services for this purpose.

6:28-1.11 Administrative Review and Hearings

(a) In addition to the situations described in 6:28-1.9, parents may invoke the procedures of this section whenever their request that their child be classified, have his or her classification changed, or have his or her program or placement changed, is denied.

(b) The basic child study team or the chief school administrator may also invoke the procedures of this section.

(c) An administrative review process may be made available to attempt to resolve disputes. Such process should consist of the following:

1. An informal conference between the parents and members of the child study team and such other professional staff member as may be appropriate and such representatives as the parent may reasonably wish to include;

2. An opportunity for the parent to meet with the local board of education;

3. Consultation with and review by special services personnel of the office of the county superintendent and regional child study teams or with the Branch of Special Education and Pupil Personnel Services, State Department of Education.

(d) In addition to this review process a hearing shall be made available upon request to the local board of education and shall include the following:

1. A full hearing before an impartial hearing examiner, conducted at a time and place convenient for the parents, with a verbatim record of the hearing kept;

2. Full access by the parent to all records, findings and recommendations of the child study team reasonably in advance of the hearing;

3. The parent shall have a right to the presence of legal counsel and other representatives;

4. An opportunity for the parent to be heard, to present witnesses, and to cross-examine witnesses appearing on behalf of the child study team or the chief school administrator or designee;

5. A decision in writing shall be made promptly and be based upon a de novo consideration of the evidence presented at the hearing; and a copy shall be made available to the parent.

(e) Any party may appeal this decision to the Commissioner of Education.

(f) The decision of the Commissioner of Education may be appealed to the State Boardof Education.

(g) The decision of the State Board of Education may be appealed to the New Jersey Superior Court, Appellate Division.

(h) No recommendation for placement, change in placement or exclusion from placement of a handicapped child shall be implemented before a hearing is held on a parental challenge to such recommendation and a decision entered; provided a request for a hearing is made within ten days of notification of such recommendation, except that such recommendation may be implemented if the chief school administrator demonstrates with clear and convincing proof that failure to effect such implementation will harm the child or other children.

(i) The decision entered after initial hearing shall be binding on all parties to the dispute and shall be implemented without delay. No stay of this decision, or of any subsequent decision rendered on appeal, shall be granted pending appeal unless appellant demonstrates a likelihood of prevailing on appeal and that implementation will harm the child or other children. Application for a stay is to be made first to the body rendering the decision being appealed. If denied, such application may thereafter be made to the body to which an appeal is taken.

SUBCHAPTER 2. CLASSIFICATION

6:28-2.1 Definitions

N/C

6:28-2.2 Disability diagnostic examination

(a) N/C.

(b) Where the Division of Youth and Family Services has participated in the identification process, pursuant to section 6:28-1.8(b), and has made a request of the local board for evaluation and classification of a child, should the local board fail to provide for such examination within 30 days of the request, the Division may assume the classification responsibility using its own child study team and performing this function according to the procedures herein established.

[(b)] (c) Examination and classification shall include the following:

N/C

6:28-2.3 Special classification considerations

N/C

6:28-2.4 Other classification considerations

N/C

SUBCHAPTER 3. PLACEMENT AND PROGRAMS

6:28-3.1 [Handicapped pupils] Educational Programs

(a) Handicapped pupils shall be [assigned to] afforded educational programs according to how they can best achieve success in learning.

(b) Whenever possible handicapped pupils shall be grouped and/or participate with nonhandicapped children in activities that are part of their educational programs.

State of New Jersey
DEPARTMENT OF EDUCATION
225 WEST STATE STREET
P O BOX 2019
TRENTON, NEW JERSEY 08625

SPECIAL EDUCATION

RULES AND REGULATIONS

Division of Curriculum and Instruction

Branch of Special Education and Pupil Personnel Services

June, 1973

Assistant Commissioner of the Bureau of Special Education and Pupil Personnel Services of the New Jersey State Department of Education. Approval of the use of the services of such clinics, agencies, and professionals in private practice, representing a basic child study team discipline and acting as a team in the child evaluation process in lieu of the basic child study team shall be contingent upon the employment of personnel approved by the Bureau of Special Education and Pupil Personnel Services. Such services may also be used supplemental to those of the basic child study team.

6:28-2.3 Special classification considerations

(a) A child who cannot give evidence to the child study team of understanding and responding in a positive manner to simple directions expressed in the primary communication of that child and who cannot in some manner express basic wants or needs due to mental retardation may be classified as "neither educable nor trainable."

(b) A child who manifests chronic atypical behavior in an educational situation, which behavior is a threat to himself or others, and who cannot respond nor benefit from appropriately planned learning experiences in public or nonpublic school settings may be classified as "not able to profit from prescribed instructional programs."

(c) Classification which describes the child as "not able to profit from prescribed instructional programs" or "neither educable nor trainable" shall be reexamined annually by a basic child study team. Such reexamination may be made whenever there is evidence to indicate a change in status, or at the beginning of the next school year or on the request of the parent or guardian of the child no later than one year from the date of the last previous examination and classification.

(d) Parents or guardians of children classified as "not able to profit from prescribed instructional programs" or "neither educable nor trainable" shall be notified in writing at the time of the original classification of the school district's responsibility to reexamine and reclassify such children upon presentation of the child by the parent or guardian after one year has elapsed. ✓

(e) Subject to review and approval of the Commissioner of Education, children classified as "neither educable nor trainable" or "not able to profit from prescribed instructional programs" may be refused admission or excluded from the education program of a public school district. All such children shall be reported immediately according to N.J.S.A. 18A:46-18.

NEW HAMPSHIRE

SPECIAL EDUCATION SECTION
VOCATIONAL REHABILITATION DIVISION
NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
105 LOUDON ROAD, BLDG. #3
CONCORD, NEW HAMPSHIRE
(Telephone 603 271-3741)

June 27, 1975

TO: Superintendents of Schools
Special Education Personnel

FROM: Newell J. Paire
Commissioner of Education

SUBJECT: Amendment to State Plan Under Part B, EHA as Required by P.L. 93-380

This is a reminder that these Federal regulations accepted and approved by the New Hampshire State Board of Education have an effective date of July 1, 1975.

The three main areas of concern in the new regulations are:

A. Due process guarentees;

1. Prior notice to parents or guardians of the child when the local or State educational agency proposes to change the educational placement of the child.

2. An opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child.

3. Procedures to protect the rights of the child when the parents or guardians are not known, unavailiable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency involved in the education or care of children) to act as a surrogate for the parents or guardians.

4. Provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate appeal.

B. Least Restrictive Alternative;

Procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

C. Non-discriminatory Testing and Placement Procedures;

Procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

Attached are two (2) copies of the amendments to P.L. 93-380 as approved by the State Board of Education. These copies are revised and replace the previous mailing dated March 14, 1975. It is suggested that you make provisions to implement those sections of the regulations that you are able to do.

The Special Education Section will be in contact with you throughout the next year in regard to the progress you are making in implementing these regulations at the local level. The Special Education Section Consultants are available to you for technical assistance and I urge that you contact them as the need arises.

It appears that the Federal Government will allow one year, from July 1, 1975, to July 1, 1976, for full implementation of these regulations at the local level.

Based upon this apparent one year planning, development and implementation period, the Special Education Section personnel and local education agency representatives are now writing guidelines for the P.L. 93-380 regulations. Upon completion, these guidelines will be dissiminated to all superintendents of schools and area special education personnel for their reaction.

Please keep one copy of the attached amendments for your reference and forward the other to your special education personnel. Additional copies are available upon request.

DJW/RTK/SEG/AHE:ges
6/27/75

PROCEDURAL SAFEGUARDS
(EHA-B: 613 (a)(13))

2.00 Due Process Guarantees. The following due process procedures have been adopted by this State Board of Education and SEA to comply with Section 613(a)(13)(A) (i)-(iv) of EHA-B, as amended by P.L. 93-380:

2.10 Definitions:

(a) Parent. The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian or a surrogate parent for the child appointed pursuant to procedures set out herein. The term "parent" also includes the child if he has reached the age of eighteen (18).

(b) Notification. Terms such as "notice" and "notification" include (1) written statements in English and in the primary language of the parent's home, and (2) oral communication in the primary language of the home.

(c) "Surrogate Parent" means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the State. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

2.20 Parental Permission for Testing. When there is reason to believe that a pre-school or school-age child is in need of special educational services, and such a child becomes the subject of individual evaluation procedures (formal testing or assessment), then advance written permission for such procedures to be used should be obtained from the parents. The letter requesting permission for such testing should contain the following:

(a) The reasons the evaluation has been requested, and the name of the person who initiated the process,

(b) a statement of the right of the parents to refuse to permit the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evaluation,

(c) a statement of the right of the parents to review all relevant records and to be fully informed of the results of the evaluation, and

(d) a declaration that the child's educational status will not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.

2.30 Prior Notice. Prior written notice shall be given to the parents or guardians of the child when the local or state educational agency proposes to change the educational placement or program of the child.

2.31 Whenever a change is proposed in a child's educational program (including proposed changes resulting from periodic reviews), the LEA must notify the parent in advance of the proposed action.

2.32 When a parent's request for a different placement for a child is denied, the LEA must notify the parent in advance of the proposed action.

2.33 The written notice should:

(a) Describe the proposed action and the reasons why such action is deemed appropriate or inappropriate for the child.

(b) State that school files, records, and reports pertaining to the child will be available for inspection and copying at reasonable cost.

(c) Describe the right to obtain a local due process hearing if there are objections to the proposed or requested action, including a description of all of the rights regarding procedures at such a hearing in accordance with RSA 193:3.

(d) Assure that the parents may obtain an independent educational evaluation of the child which will be reviewed by the LEA.

(e) Assure that the parents if aggrieved by the local boards due process hearing may appeal to the State Board in accordance with RSA 193:3.

(f) If the parents object to the proposed LEA action, state that the child should remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. (In an emergency situation where the health and safety of the child or of other persons or so disruptive to the program for the other children, a change in placement may be made earlier by order of the State Commissioner of Education or his designee.

40 Due Process Procedures. The LEA shall provide procedures to insure that the parents or guardians have an opportunity to obtain an impartial due process hearing, and insure that the decisions rendered shall be binding on all parties subject only to appropriate appeal in accordance with RSA 193:3.

2.41 The right to an impartial due process hearing regarding the educational placement of an individual student shall be available to the parents or guardians of all students, including students for whom the school has recommended special education placement, students who have been declared ineligible for special education programs, students whose parents believe they require special education programs.

2.42 The request for a hearing regarding the educational placement of a student shall be made to the School Board in the district where the child resides.

2.43 The hearing at the local level shall occur as soon as possible but in no case later than thirty (30) calendar days after the request.

2.44 The parents shall be allowed access to appropriate school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.

2.45 The parents may obtain an independent evaluation of the child's educational needs and said evaluation may be submitted to the Board.

2.46 The hearing shall seek to determine any or all of the following:

(a) Whether the child has needs which require special education.

(b) Whether the evaluation procedures utilized in determining the child's need have been appropriate.

(c) That the diagnostic profile of the child on which the placement decision was based is verified.

(d) That the proposed placement is directly related to the child's educational needs.

2.47 The parents should be given the opportunity to have in attendance at the hearing any officer, employee or agent of the local education agency or State Education Agency who may have testimony or evidence relevant to the question of the needs, abilities, proposed placement status of the child.

2.48 The proceedings will be recorded on tape or by other appropriate means. A summary of the proceedings will be made available at a reasonable cost to the parent(s) or guardian(s), or their authorized agents within forty-five (45) days. All requests for summaries shall be made in writing to the local Superintendent of Schools.

2.49 After considering the facts as presented at the hearing, the school officials shall make a decision and such decision shall be communicated to the parents or guardians within ten (10) calendar days of the completion of the hearing.

2.4(10) The notice of the decision shall also inform the parents of their rights to appeal the placement decision to the State Board of Education. The request for a State Board of Education hearing must be made in writing to the Commissioner of Education within ten (10) school days of receipt of the decision following the local hearing.

2.4(11) By mutual agreement and for good cause the time to request a State Board of Education appeal may be extended to thirty (30) calendar days.

2.4(12) Upon notification that an appeal will be made to the State Board of Education, the district shall prepare a summary of the local hearing which will include copies of appropriate documents introduced at the hearing. Copies of the summary and documents shall be made available to the parents and to the Commissioner of Education within fifteen (15) calendar days of the request for a State Board of Education hearing.

2.5 State Board of Education Due Process Procedures. Upon request for a State Board of Education hearing, the State Commissioner of Education shall provide to the parents and to the officials of the LEA notification as to the time and place of the hearing within thirty (30) days from the date of the hearing request.

2.51 The parents shall be given the opportunity to have in attendance at the hearing any officer, employee or agent of the local education agency or state education agency who may have testimony or evidence relevant to the question of the needs, proposed placement or status of the child.

2.52 Steps should be taken to assure that the child will remain in his/her present educational placement until the State Board of Education enters a decision following the hearing (except that in emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement or so disruptive to the program for other children, a change in placement may be made by the State Commissioner of Education.

2.53 The parents and the LEA may have representatives, including but not limited to legal counsel or other professional persons, attend the hearing. The State Board of Education may be represented by the Office of the Attorney General at the hearing as legal counsel.

2.54 The hearing shall be closed to the puclic unless the parents request an open hearing.

2.55 If the child is over the age of majority, he or she has the right to attend the hearing; if the child has not reached the age of majority, the parents have the right to determine whether he/she should attend the hearing, except that upon a finding by the State Board of Education that attendance by the child would be harmful to his/her welfare, the child may be excluded from portions of or the entirety of the hearing.

2.56 The proceedings will be recorded on tape or by other appropriate means. Summaries of the proceedings will be made available at a reasonable cost to the parent(s) or guardian(s), local superintendents of schools, or their authorized agents within forty-five (45) days. All requests for summaries shall be made in writing to the State Commissioner of Education.

2.57 At all stages of the due process procedures, interpreters for the deaf and when needed interpreters fluent in the primary language of the Home shall be provided.

2.58 The State Board of Education shall have the authority to confirm, modify, reject, or recommend alternate special education programs for the child in accordance with RSA 193:3.

2.59 The decision of the State Board of Education shall be in writing and shall be sent to the parents, to the LEA, and to their respective representatives within fifteen (15) days.

2.5(10) The proceedings will be recorded on tape or by other appropriate means. A summary of the proceedings shall be made available at a reasonable cost to the parent(s) or guardian(s), or their authorized agents within forty-five (45) days. All requests for transcriptions shall be made in writing to the State Commissioner of Education.

2.5(11) Upon request of the parents or the LEA, a summary of the proceedings or other verbatim record of the hearing shall be provided.

2.5(12) A statement shall be included that the decision of the State Board of Education is binding subject to procedures for appeal.

NOTE: See Appendix I for "State Board of Education Policy for Administrative Hearing Procedures.

2.60 Surrogate Parents. The LEA shall provide procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency involved in the education or care of children) to act as a surrogate for the parents or guardians.

2.61 In order to provide every child eligible for a public education with the protection of procedural due process, even under circumstances where a child's parents or guardians are not known, are unavailable, or the child is a ward of the State, each child should be assigned a parent surrogate according to the following procedures:

(a) Recruitment and Training. The SEA should recruit and train persons who can serve as surrogate parents, and maintain a registry of eligible persons who can serve as surrogate parents.

(b) Selection by SEA. The SEA should select a group of people to be available to serve as surrogate parents. These people should be chosen from a list of people recommended by a State level, advisory board or committee charged with advising or working with the State regarding the education of handicapped children. This board or committee should be broadly representative of persons concerned with the education of handicapped children, including consumers, parents, teachers and/or others concerned with the education of handicapped children.

(c) Procedures for Assigning Surrogates. Assignment of a surrogate to a particular child should be made according to the following procedures.

(1) Any employee of an LEA, SEA, residential school or hospital any physician, any judicial officer, or any other person who knows that the parents or guardians are not known, unavailable, or that the child is a ward of the State, should file a request for assignment of a surrogate to the child with the child's LEA with a copy of the request to the SEA.

(2) In an effort to determine whether or not the parents or guardians are in fact unknown, unavailable, or the child is a ward of the State, the LEA should send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.

(3) The LEA should weigh the evidence and determine whether or not the parents or guardians are unknown, unavailable, or the child is a ward of the State. This determination should be completed within a reasonable time following receipt of the original request for a surrogate; and the finding should be sent to the SEA. If the SEA finds a need for a surrogate, such assignment should be made by the SEA per guidelines promulgated by the State Board of Education within five (5) days.

(4) Once assigned, a surrogate should represent the child through the time of the first periodic review of the child's educational placement and every year thereafter until the age of majority.

(5) Surrogates should not be assigned to children who have legally reached their majority.

00 Least Restrictive Alternative. Following are the procedures to insure that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

10 The LEA shall establish procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfatorily.

20 Each member of the Special Education Evaluation/Placement Team shall sign the "Annual Statement of Placement and Parental Consent to Placement" form in the section provided to indicate that the current placement of the child is in accordance with Statement 3.10 above. *(See Appendix II)

30 The approval of special education programs conducted by the SEA shall include but not be necessarily limited to a review of case files of handicapped children assigned to private and public institutions or other care facilities, special classes, separate schools or who are otherwise removed from the regular education environment to insure that this placement is in accordance with the doctrine of the least restrictive alternative.

0 The parents or guardians shall be given the opportunity to request a change or appeal the placement of a child into or out of a Special Education Program.

0 The LEA shall as prescribed by the State Board of Education and SEA annually enumerate and describe the program alternatives available in or available to the children in that LEA to meet the varying needs of handicapped children.

0 Non-discriminatory Testing and Placement. Following are the procedures that have been adopted by this State Board of Education and SEA to insure that testing and evaluation materials and procedures utilized for purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

4.10 The LEA shall provide procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

4.20 No assessment will be attempted when a child is unable to respond to the tasks or behavior required by a test because of linguistic or cultural differences or other handicapping conditions unless cultural, linguistic, or other appropriate measures are administered by qualified persons.

4.30 The LEA shall establish a Special Education Evaluation/Placement Team to be approved by the SEA annually, and to the extent appropriate, be responsible to secure, coordinate, review, and evaluate the appropriateness of the procedures, instruments, and observations used to determine the child's level(s) of functioning and behavior with regard to each child's educational needs, cultural and ethnic background and other handicapping conditions, in those cases where there is a reasonable likelihood that the child may be placed in a special education program.

4.31 Said Special Education Evaluation/Placement Team shall be representative of persons who are directly or indirectly involved in or influence the child's educational success. This might include the parents, various professional persons in the school or available to the school, including the regular teacher, special teacher, psychologist, specialist in assessment of intellectual functioning, communication/speech therapist, counselor, nurse, physician, social worker, or any other person who is qualified to help in the placement decision made by the team. Consideration should be given to cultural and ethnic representation.

4.32 Said Special Education Evaluation/Placement Team shall be responsible for evaluating all pertinent information about the child, identifying the handicap, and making recommendations concerning the most advantageous placement possible, bearing in mind the child's right to the least restrictive alternative.

4.33 Any educator or specialist suspecting a possible handicap shall refer the student to the team for consideration. Similarly, if district-wide or school-wide screening for potential handicap is provided at any point, referrals shall be passed to the local Special Education Evaluation/Placement Team.

4.34 It shall be the responsibility of the Special Education Evaluation/Placement Team to insure that to the extent appropriate the intent or effect of the evaluation shall be the development of an appropriate written educational plan for the child, based on a description of his/her strengths and weaknesses, in accordance with the doctrine of the least restrictive alternative.

4.35 The status of each child in a special education program will be reviewed annually by the local Special Education Evaluation/Placement Team in consultation with the parent to determine whether the child should:

a. Remain in his present program using the instructional plan set for the child originally;

b. Remain in his present program but with a restructured instructional pattern;

c. Be placed with a different special service unit to meet educational and/or social needs;

d. Be totally integrated into the regular classrooms with appropriate ancillary services;

e. Be offered services elsewhere in or out of the community.

4.40 All instruments in the determination of educational placements that may be termed as special education program shall be administered and interpreted by qualified examiners under conditions which are conducive to the best performances of the child.

4.41 The evaluation shall be comprehensive, using a full range of available instruments and observations, including diagnostic tests and other appropriate formal and informal assessments. Included in the total evaluation of the child should be an assessment of the psycho-motor and sensory development and where appropriate the use of adaptive behavior scales and vocational evaluation.

4.42 Whenever intelligence tests are administered, steps shall be taken to assure that the I.Q. score, per se, will not be used in making inferences about the child's level of intelligence or learning potential; instead the full test (including protocols, content, sub-tests, etc.) shall be interpreted.

4.43 The Special Education Evaluation/Placement Team shall evaluate the appropriateness of data received from all specialists used in the determination of handicapping conditions.

4.44 A qualified examiner of intellectually handicapped children shall mean:

a. A school psychologist certified by the New Hampshire State Department of Education.

b. An Associate School Psychologist working in consultation with a school psychologist or psychologist certified by the New Hampshire Board of Examiners of Psychologists.

c. A psychologist and/or associate psychologist certified by the New Hampshire Board of Examiners of Psychologists.

d. A Specialist in Assessment of Intellectual Functioning certified by the New Hampshire Department of Education working in consultation with a school psychologist or a psychologist certified by the New Hampshire Board of Examiners of Psychologists.

e Any other person certified by the Department of Education.

4.45 Children in order to be classified as having speech disorders shall be evaluated by a person certified by the New Hampshire Department of Education as a Speech and Hearing Therapist or a Speech Pathologist in private practice holding a Certificate in Clinical Competence in Speech by the American Speech and Hearing Association.

4.46 Hearing evaluations for the purposes of placement shall be conducted by a physician holding Board Certification in otology or otolaryngology or an Audiologist in private practice holding the Certificate of Clinical Competence in Audiology by the American Speech and Hearing Association; or an audiologist employed by a CARF (Commission of Accreditation of Rehabilitation Facilities) approved program in a public/private agency.

4.47 Children in order to be classified as being emotionally disturbed shall be evaluated by a licensed Board Certified Psychiatrist, a Psychologist certified by the New Hampshire Board of Examiners in Psychology or a School Psychologist certified by the New Hampshire State Department of Education.

4.48 Children in order to be classified as having a visual handicap shall be evaluated by an opthalmologist.

4.49 Children in order to be classified as having other physical impairments shall be evaluated by licensed physicians.

4.4(10) Data classifying children classified as being Learning Disabled shall be evaluated by the Special Education Evaluation/Placement Team to insure that appropriate evaluational procedures were utilized by qualified examiners.

4.50 Parents shall be given a full written report of the results of the evaluations and whenever possible, shall participate in the development of the educational plan for the child.

4.60 Parents may request a LEA to conduct an evaluation of their child when they feel he or she is in need of a special program.

4.70 The parents, shall have the right to obtain an independent evaluation of their child, if they disagree with the evaluation conducted by the LEA.

4.80 The expenses incurred in an initial LEA evaluation procedure recommended by the Special Education Evaluation/Placement Team of that LEA shall be an obligation of that school district in accordance with RSA 186-A:12.

Amendment to "Annual Statement of Placement and Parental Consent to Placement" form.

The Special Education Evaluation/Placement Team members whose signatures appear below, agree to the following statement regarding the placement of this child:

That to the maximum extent appropriate this handicapped child who has been assigned to a public, private or other care facility, is being educated with children who are not handicapped, and that the assignment of this child to a special class, separate school, or other form of substantial removal from the regular educational environment has occurred because the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Special Education Evaluation/Placement Team members disagreeing with the placement of this child in regard to the above statement.

WELL J. PAIRE
COMMISSIONER
ROBERT L. BRUNELLE
DEPUTY COMMISSIONER

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

DIVISION OF
VOCATIONAL REHABILITATION
105 LOUDON ROAD
CONCORD, N.H. 03301

(603) 271-3741

FROM: Jackie Teague, Social Worker
Special Education Section
Division of Vocational Rehabilitation
105 Loudon Road, Building #3
Concord, New Hampshire 03301

DATE: January 15, 1976

SUBJECT: Administrative Hearing Procedures

TO: Superintendents of Schools
Assistant Superintendents of Schools
Directors of Pupil Personnel Services
Directors of Special Education
Persons Responsible for Administering Special Education

Commissioner Newell J. Paire has authorized the Special Education Section to provide you with copies of the Administrative Hearing Procedures to be given to parents who are considering appealing local school board decisions to the State Board of Education. Enclosed for Superintendents are five copies of the hearing procedures. Additional copies are available upon request to the Special Education Section Office.

JT/b
1/15/76
325 - 250

Disability Knows No Race, Color, or National Origin - We Serve All of the Handicapped

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
VOCATIONAL REHABILITATION DIVISION
SPECIAL EDUCATION SECTION
105 LOUDON ROAD, BLDG. #3
CONCORD, NEW HAMPSHIRE 03301
Telephone: (603) 271-3741

ADMINISTRATIVE HEARING PROCEDURES

(for appeals other than RSA 189:13, 189:14-A, 189-14-B promulgated under the provisions of RSA 541-A)

I. PURPOSE

The purpose of this policy is to provide flexible procedural guidelines for the fair hearing of appeals to the State Board of Education, other than with regard to those appeals which are taken from decisions of local school boards pursuant to RSA 189:13, 14-a, 14-b, 32. The State Board may, in particular cases, waive individual rules set out herein, and expand upon them, in order to achieve this purpose or to conform to any inconsistent statutory provision. This policy shall not be construed to create a right of appeal where one does already exist.

II. PRE-HEARING PROCEDURE

(A) An appeal to the State Board shall be in writing and filed with the Commissioner of Education. It shall concisely allege:

(1) the background of the problem;

(2) any action taken below;

(3) the specific grounds upon which any such action is claimed to be in error; and

(4) the complete names and current addresses of all parties.

(B) The Commissioner or his designee shall investigate the circumstances leading to the appeal. All parties shall promptly comply with requests by the Commissioner or his designee for information, access to potential evidence, and written replies to questions.

III. PROCEDURE AT THE HEARING

(A) The appellant or his counsel, shall open the proceedings through production of his witnesses and exhibits, to be followed by those produced by the appellee or his counsel. Each party or his counsel shall be afforded the opportunity to cross examine each witness at the conclusion of the witness's direct testimony. Members of the State Board may ask questions of the witnesses during or subsequent to direct or cross examination, and each party or his counsel shall produce such additional evidence as the State Board may deem necessary to an understanding and determination of the issues.

(B) Witnesses should appear in person unless extenuating circumstances prevent them from such appearance. The State Board may receive and consider the evidence of witnesses by sworn statement, but shall give it only such weight as they deem it entitled to after consideration of any objections made to its admission. Exhibits offered by a party or his counsel may be received in evidence.

(C) The State Board shall determine the admissibility of evidence. Strict conformance to the rules of evidence shall not be necessary, and each party or his counsel may offer such evidence as he desires, but irrelevant, immaterial, or unduly repetitious evidence will be excluded.

(D) After all the evidence is submitted, the appellant or his counsel shall be afforded the opportunity to present a short summary of his case to the State Board, followed by the same opportunity for the appellee or his counsel.

IV. POST-HEARING PROCEDURE

Subsequent to the hearing, the State Board shall meet in deliberation and reach its decision based upon the evidence presented at the hearing. The Commissioner shall promptly notify the parties of the decision and the essential findings of fact upon which it was based, at the addresses provided, by certified mail, return receipt requested.

Approved by the N.H. State Board of Education -- July 16, 1975

750-250

III. PROCEDURE AT THE HEARING

(A) The appellant or his counsel, shall open the proceedings through production of his witnesses and exhibits, to be followed by those produced by the appellee or his counsel. Each party or his counsel shall be afforded the opportunity to cross examine each witness at the conclusion of the witness's direct testimony. Members of the State Board may ask questions of the witnesses during or subsequent to direct or cross examination, and each party or his counsel shall produce such additional evidence as the State Board may deem necessary to an understanding and determination of the issues.

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Approved by the N.H. State Board of Education -- July 16, 1975

Effective July 1, 1976

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
VOCATIONAL REHABILITATION DIVISION
SPECIAL EDUCATION SECTION
105 LOUDON ROAD, BLDG. #3
CONCORD 03301
Telephone: (603)271-3741

NEW HAMPSHIRE REVISED STATUTES ANNOTATED RELATING TO PUBLIC SCHOOLS

Chapter 186-A

Program of Special Education

186-A:1 *Declaration of Purpose.* It is hereby declared to be the policy of the state to provide the best and most effective education possible to all handicapped children in New Hampshire.

186-A:2 *Definitions.* The following words as used in this chapter shall be construed as follows:

I. "Physically handicapped" shall mean a person up to twenty-one years of age, married or unmarried, whose activity is or may become so far restricted by reason of a physical defect or infirmity, however caused, as to reduce his normal capacity for education or self-support, or both.

II. "Intellectually handicapped" shall mean a person up to twenty-one years of age, married or unmarried, whose activity is or may become so far restricted by intellectual handicap, however caused, as to reduce his normal capacity for education or self-support, or both.

III. "Emotionally handicapped" shall mean a person up to twenty-one years of age, married or unmarried, who, by reason of internal emotional conflicts, home conditions or general environment, has behavior and/or learning problems or is otherwise unable to make normal social or educational adjustments but who has sufficient intellectual and emotional capacity to be enabled with clinical diagnosis, proper treatment, training and remedial education to become a responsible and self-supporting citizen.

IV. "Handicapped child" shall mean any person up to twenty-one years of age who is handicapped by one or more of the above-defined handicaps.

V. "Approved program" means a program of education that has been approved by the state board of education and that is maintained by a school district, private organization or state institution for the benefit of handicapped children.

VI. "Approved plan" means a plan for the education of handicapped children that has been developed by a school district and that has been approved by the state board of education.

186-A:3 *Program Established.* The state board of education is authorized to establish a program of special education within the funds appropriated or available and to appoint such personnel as may be necessary for the proper operation of said program.

Effective July 1, 1976

186-A:4 *Enumeration.* Every school board shall annually by October first report to the state department of education on forms provided by that department the number of handicapped children in its school district. A later report shall be made when any other handicapped child shall be located in said district.

186-A:5 *Education.* The state board of education shall assist each school district in developing an approved plan which the district shall use for the education of handicapped children.

186-A:6 *Education Required.* Every handicapped child capable of being benefited by instruction shall attend an approved school or program to which he may be assigned. If a handicapped child capable of being benefited by instruction shall make application for continued educational facilities, such instruction may be continued until such time as the handicapped child has acquired education equivalent to a high school education or has attained the age of twenty-one years.

186-A:7 *Establishment of Programs.* A school district shall establish programs for handicapped children as approved by the state board of education, or shall pay tuition to such an approved program maintained by another school district or by a private organization. Eligibility for this type of education shall be determined by the school board under regulations promulgated by the state board of education.

186-A:8 *Tuition of Handicapped Children.*

I. Whenever any handicapped child shall attend any public or private school or program situated within or outside of this state, which offers special instruction for the training and education of handicapped children, and which has been approved for such training by the state board of education, the school district where such handicapped child resides is hereby authorized and empowered and shall appropriate and pay a portion of the cost of such education. The school district in which each handicapped child resides shall be liable for the tuition of said child.

II. The tuition liability of the school district shall be limited to the state average cost per pupil of the current expenses of operation of the public elementary, junior high or high school as estimated by the state board of education for the preceding school year. This current expense of operation shall include all costs except costs of transportation of pupils, except capital outlay and debt obligations.

III. A school district may pay for tuition costs other than the amount specified in paragraph II when in the judgment of the school board the circumstances warrant it.

IV. In Cheshire county upon request of such school district, and upon approval by the county convention, the county may raise and appropriate funds to pay a portion of such costs for special education under this section.

V. Schooling for handicapped children may commence at any age when approved by the state board of education. The state board of education may assign children to approved schools for handicapped children as provided in RSA 193:3.

VI. Within the limitations of the appropriated funds made available for the purposes of this section, the state board shall be responsible for such tuition costs which exceed the state average costs per pupil when the appropriation is sufficient so as not to jeopardize existing obligations undertaken by said board in assisting handicapped children currently under special instruction or training.

VII. The amount of the tuition costs for handicapped children that can be assumed by the state in excess of the obligation of the school district shall be determined by the state board of education after assessing its current commitments and obligations against the total appropriation for the purpose of this section.

186-A:9 *Transportation.* The school board shall furnish suitable transportation to all handicapped children who are able to be so transported from their homes to the place where such instruction or training is to be furnished. However, the liability of a school district for transportation shall not exceed for each pupil transported an amount equal to the liability to the district for tuition as specified in RSA 193:4 Where the cost of such transportation would constitute an unreasonable expense the school board shall, at the expense of the district, board the children near the place where such instruction or training is to be furnished and shall provide transportation from the place where the children are boarded to the place of instruction or training. A school district may pay for transportation at a rate per pupil higher than the amoun of liability for tuition as specified in RSA 193:4, when in the judgment of the school board the circumstances warrant it.

186-A:10 *Federal Assistance.* The state board of education is hereby authorized to cooperate with the federal government or any agency thereof in the development of any plan for the education of handicapped children and to receive and expend, in accordanc with such plan, all funds made available to the state board of education from the federal government or any of its agencies, the state or from other sources. The several school districts of the state are hereby authorized to receive, incorporate in their budgets, and expend for the purposes hereof such funds as may be made available to them through the state board of education from the federal government or any of its agencies.

186-A:11 *State Aid.* The state board of education is authorized to promulgate a program setting forth standards for education for handicapped children and to pay over to any school district, or private organization operating such an approved program, certain sums to pay a portion of the actual cost of the education of each New Hampshir resident child in such an education program, so long as said program meets the standar set by the state board of education and so long as funds are appropriated for the purpose.

186-A:12 *Expenses.* The expenses incurred by a school board in administering the law in relation to education for handicapped children shall be paid by the district in which the case arises, from funds appropriated or made available to said district.

186-A:13 *Limitation and Provisions.* Nothing in this chapter shall be construed as authorizing any public official, agent, or representative, in carrying out any of the provisions of this chapter to take charge of any child over the objection of either of the parents of such a child, or of the person standing in loco parentis to such child except pursuant to a proper court of order.

1

OTHER PERTINENT STATUTES

193:3 *Change of School or Assignment; Excusing Attendance.* Any person having custody of a child may apply to the school board for relief if he thinks the attendance of the child to the school or special class for handicapped children to which he has been assigned will result in a manifest educational hardship to the child and, if the person having custody of the child is aggrieved by the decision of the school board, he may apply to the state board of education and the state board of education, after investigating the case and giving notice to the school board, may order such child to attend another school in the same district if such a school is available, or to attend school in another district. In case the child shall be assigned to attend school in another district the district in which such child resides shall pay to the district in which such child attends tuition computed as provided in RSA 193:4. The state board of education may also permit such child to withdraw from school attendance for such time as it may deem necessary or proper or make such other orders with respect to the attendance of such child at school as in its judgment the circumstances required. For the purposes of this section, handicapped children shall mean all those persons as defined in RSA 186-A:2.

****

8:41-c *Educational Expenses.* Educational expenses of any inmate or patient, who is educable or trainable and who is between six and twenty-one years of age, as required under statute and incurred in the institutions named in or at the direction of the commissioner of health and welfare, in any public or private institution or elsewhere, shall be recovered from the school district in which the patient's or inmate's parents or legal guardian reside on the January first preceding the recovery up to the state average elementary cost per pupil, as determined by the state board of education for the preceding school year. The liability of the school district for such expenses shall precede that of the persons and estates named in RSA 8:41 and RSA 8:41-a, which are hereby relieved of liability for such expenses to the extent of the school district's liability.

****

EDUCATION OF CHILDREN PLACED IN HOMES FOR CHILDREN

193:18-a *Definition.* The term "home for children" as used in this sub-division shall mean any orphanage, institution for the care, treatment or custody of children, or child caring agency as defined in RSA 170:2.

193:18-b *Right of Attendance.* Whenever any child is placed and cared for in any home for children, such child, if of school age, shall be entitled to attend the public schools of the school district in which said home is located, unless such placement was solely for the purpose of enabling a child residing outside said district to attend the school thereof. For the purpose of computing foundation aid in accordance with RSA 198:8-12 for the fiscal years 1961-62 and 1962-63, children placed in "homes for children" in the second preceding year shall be credited in average daily membership to the district which said home was located.

[illegible]

The Local School District Special Education Evaluation/Placement Team has reviewed th student's educational needs and recommends that this student receive special services. The school district has prepared this document, the Statement of Placement, to inform you about this recommendation. At the time this Statement is offered to you, a school district offi will already have signed at the top of Page 6 so that you will know the recommendation is official. You are given 3 copies of this Statement to sign; one for you to keep, 2 for you to return to the school district. The school district will send one copy to be filed at th State Department of Education, Special Education Section (address below).

YOU HAVE THE FOLLOWING RIGHTS:

1. You may accept this recommendation for placement or services as described in writing on the previous pages. If you accept, sign Part A on Page 6 within 14 calendar days. Kee the copy marked "Parent's Copy." Return the other two copies to the school district at the address indicated on Page 6.

2. You may appeal any aspect of the services or placement of this student as described in previous pages. To appeal, sign Part B on Page 6 and describe the changes you want mad in the recommendation on the blank lines on Page 6. You must appeal within 14 calendar days of receiving your Statement from the district. Keep the copy marked "Parent's Cop and return the other two copies to the school district at the address indicated on Page Be sure the school district receives those two copies before the 14 days are up.

   If you sign Part B, it means you are requesting a hearing within 30 calendar days with your local school board. At this hearing the school board will discuss with you your dissatisfactions about the program or services which the school district is recommendin Under the provisions of Public Law 93-380, the school board must hold the hearing withi 30 calendar days of your request for a hearing, and must give you a written decision on your appeal within 10 calendar days after the hearing.

   Between the date you request the hearing and the date the hearing is held, you and the school district may continue to negotiate. If the school district offers you a written amended recommendation before the hearing which is acceptable to you, you would sign Part A (acceptance) on the Amendment Page which would cancel your hearing.

   If you do appeal to the local school board for a hearing, you will want to follow the procedures carefully. Get a copy of Public Law 93-380 from your school officials and read the sections concerning appeals (Sections 2.40 and 2.[illegible]). P.L. 93-380 will outlin your rights and the procedures for your appeal.

For further explanation of the appeal procedure or your rights, you may contact the Special Education Section, New Hampshire State Department of Education, 105 Loudon Road, Building # Concord, New Hampshire 03301. Telephone: 271-3741

3. If you are dissatisfied with the decision of your local school board, you may appeal to the State Board of Education in accordance with RSA 193:3 and P.L. 93-380. Within 10 school days or 14 calendar days, write a short note to the Commissioner of Education, 410 State House Annex, Concord, New Hampshire 03301, explaining the situation and your dissatisfaction, following the outline in Part II (A) of the Administrative Hearing Procedures, a document available from your Superintendent. Keep a copy of your note an send a copy to your Superintendent to alert him to prepare the required summary of the local hearing.

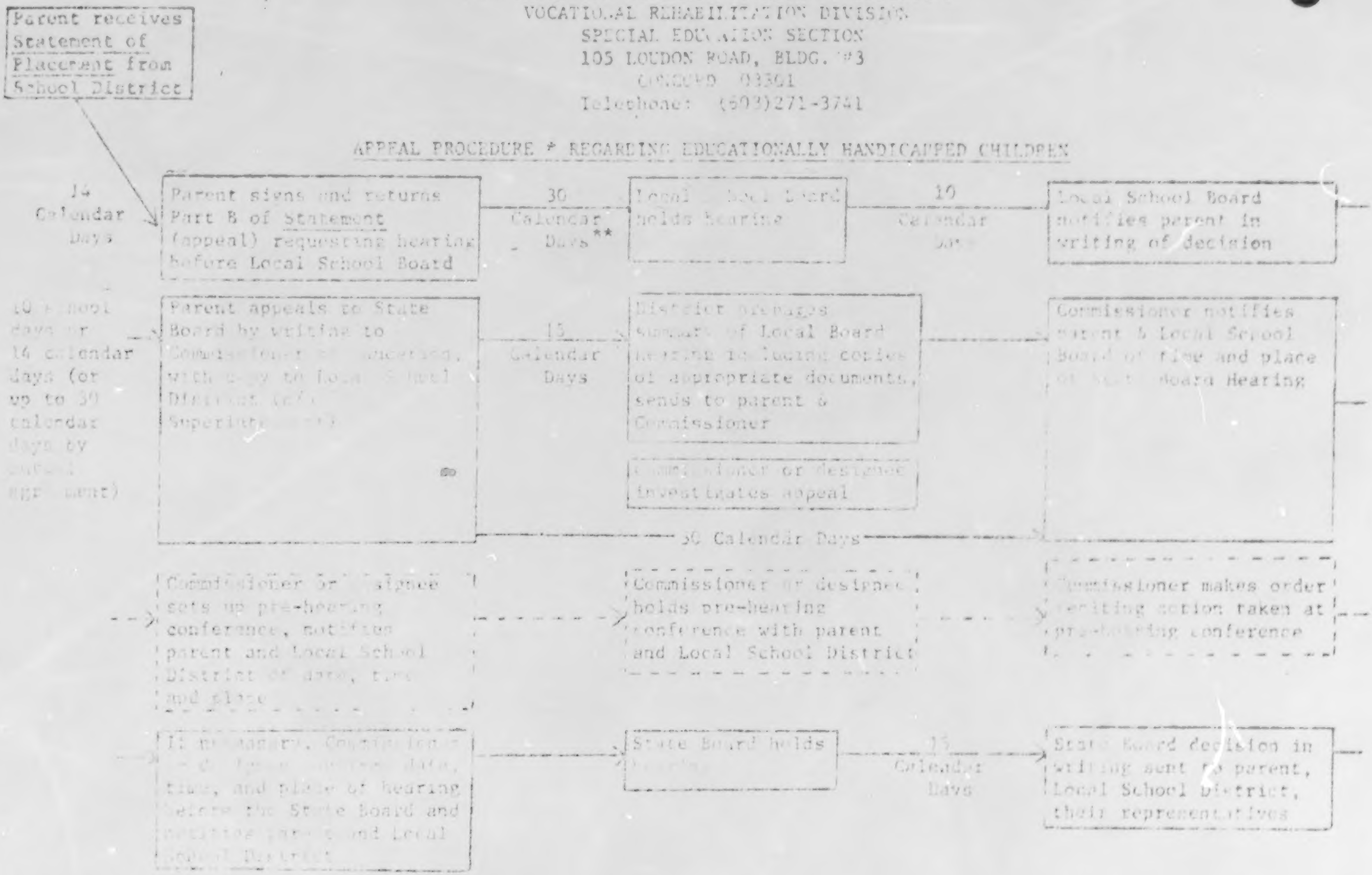
4. You may decline placement of this student in any special education program. If you are considering this possibility, it is important that you discuss the many consequences of your choice with your local school officials. For further information, you may call or write to the Special Education Section (office), 105 Loudon Road, Bldg. #3, Concord, NH 03301, Telephone: 271-3741.

[This page is part of the Statement of Placement and must be given to the parent at the sam time as the other pages of the Statement of Placement and must be included in the parent's copy.]

White copy for parent/ Yellow copy for school district/

NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION
VOCATIONAL REHABILITATION DIVISION
SPECIAL EDUCATION SECTION
105 LOUDON ROAD, BLDG. #3
CONCORD 03301
Telephone: (603)271-3741

APPEAL PROCEDURE * REGARDING EDUCATIONALLY HANDICAPPED CHILDREN



Parent receives Statement of Placement from School District

Parent signs and returns Part B of Statement (appeal) requesting hearing before Local School Board

Local School Board holds hearing

Local School Board notifies parent in writing of decision

Parent appeals to State Board by writing to Commissioner of Education, with copy to Local School District (c/o Superintendent)

District prepares summary of Local Board hearing including copies of appropriate documents, sends to parent & Commissioner

Commissioner or designee investigates appeal

Commissioner notifies parent & Local School Board of time and place of State Board Hearing

Commissioner or designee sets up pre-hearing conference, notifies parent and Local School District of date, time and place

Commissioner or designee holds pre-hearing conference with parent and Local School District

Commissioner makes order reciting action taken at pre-hearing conference

If necessary, Commissioner or designee sets date, time, and place of hearing before the State Board and notifies parent and Local School District

State Board holds hearing

State Board decision in writing sent to parent, Local School District, their representatives

*The authority for the various provisions of this procedure is drawn from policies adopted by the NH Board of Education including (1) Amendment to State Plan under Part B, EHA as required by Public Law 93-380, (2) Administrative Hearing Procedure, and (3) Annual Statement of Placement and Parental Consent to Placement, and from NH RSA 193:3. Copies of these documents are available at your Superintendent of School's Office.

**The local school district and the parents are encouraged to resolve the issues at this early point, before the local school board hearing, if at all possible.

JT/h 11/15/76

- - - - - This level of appeal is optional at Commissioner's discretion

NEW MEXICO

REGULATIONS FOR SPECIAL EDUCATION

First Edition - July 1, 1975
Second Edition - July 1, 1976

prepared for the

STATE BOARD OF EDUCATION

Herbert E. Walsh, *President*

Joe Romero, *Vice President*

Virginia Gonzales, *Secretary*

Virgil Henry, *Member*

L. Grady Mayfield, *Member*

Henry G. Rodriguez, *Member*

Lois M. Tafoya, *Member*

George O. Teel, *Member*

Lydia Wright, *Member*

Leonard J. DeLayo
Superintendent of Public Instruction

by the

STATE DEPARTMENT OF EDUCATION

Division of Special Education

Elie S. Gutierrez, *Director*

Ruth Fletcher Brown, *Plan Coordinator*

Candace K. Frostenson
Paige Galvin
Albert S. Gomez
Edward Gonzales
Marjorie McCament
Charles Selva
Kathy Waters

THESE REGULATIONS WILL BE UNDER A CONTINUOUS REVIEW PROCESS, AND ANY ADDITIONS AND/OR CHANGES WILL BE PROVIDED THOSE SERVING NEW MEXICO'S EXCEPTIONAL CHILDREN

- case history: educational, family, medical
- educational achievement
- language dominance of the home
- current intellectual functioning level
- information as required for specific areas of exceptionality
- measure of adaptive behavior

2.2.2 Any deviation from the prescribed evaluation data must receive prior approval of the State Department of Education.

2.3 *Inclusion, Exclusion Factors*

2.3.1 *LOCAL EDUCATION AGENCIES SHALL NEITHER INCLUDE IN NOR EXCLUDE FROM SPECIAL EDUCATION PROGRAMS CHILDREN WHO ARE LINGUISTICALLY OR CULTURALLY DIFFERENT ON THE BASIS OF EVALUATION CRITERIA WHICH HAVE BEEN DEVELOPED WITHOUT CONSIDERATION FOR DIVERSE LANGUAGE AND CULTURAL FACTORS.*

2.4 *Eligibility Contingency*

2.4.1 Eligibility for special education is contingent upon an identified condition of exceptionality. Program recommendation is based upon a determined level of educational need.

2.5 *Annual Review of Student*

2.5.1 Educational progress of students enrolled in special education programs shall be assessed annually by an Educational Appraisal and Review Committee.

2.6 *Reassessment of Placement Data*

2.6.1 Evaluation data necessary for determining the eligibility of students enrolled in special education shall be readministered at least every three years.

3.0 SPECIAL EDUCATION PLACEMENT PROCESS

3.1 *Educational Appraisal and Review Committee*

3.1.1 The local education agencies shall establish Educational Appraisal and Review Committee(s).

2.0 SPECIAL EDUCATION ELIGIBILITY PROCESS

2.1 *Parent Notification and Consent*

2.1.1 For the purpose of this document, "parent" refers to a natural mother or father, an adoptive mother or father, a legally appointed guardian, a duly appointed surrogate parent, and/or the child who has reached the age of majority.

2.1.2 Informed written consent of the parent(s) shall precede the initiation of individualized diagnostic evaluations.

2.1.3 At the time consent is requested, parent(s) shall be apprised of their right to examine all relevant records with respect to classification and placement of the child, to obtain an independent evaluation of the child, and to obtain an impartial due process hearing. Such costs as might be accrued by said independent evaluations shall be assumed by the parent(s). Where the cost for evaluation will place an economic burden on the family, referral will be made to the appropriate office of the Health and Social Services Department, Social Services Agency, for evaluation assistance through a Child Development Center, Crippled Children's Services' approved evaluation agent, County Health Department, etc.

2.2 *Evaluation Process*

2.2.1 The evaluation process of all students referred for special education shall include: (See specific areas of exceptionality - Section 4.0 through Section 13.5.)

a. review of past educational records.

b. review of school health records.

c. administration of vision screening - inclusive of near and far vision and color discrimination.

d. administration of hearing screening.

> –Puretone audiometric assessment is to be conducted in frequencies of the speech range (500Hz-400Hz) at a hearing level not to exceed 20 dB.

e. referral to appropriate specialist for further evaluations when screening tests are failed or physical impairments are suspected.

f. the securing of data inclusive of, but not limited to:

d. diagnostician(s) recommendation

The summary of information from the diagnostician(s) who has (have) done the educational and/or medical evaluation(s) of the student.

3.2.3 Any placement is subject to continual revision of the recommendations dependent on student progress in the selected program.

3.3 *Parent Notification and Consent*

3.3.1 Conferences mutually convenient to parent(s) and local education personnel shall be made available prior to educational placement, and the parent(s) shall be advised of the evaluation results and committee recommendations. Conferences shall be in terms that are comprehensible to the parent(s). An interpreter shall be present when appropriate.

3.3.2 Informed written consent shall be obtained from parent(s) prior to student placement or change in a special education program and annually when placement is to be continued.

3.4 *Appeals from Educational Appraisal and Review Committee Recommendation/Impartial Due Process*

3.4.1 Procedures shall be adopted by local education agencies for insuring that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement of exceptional children.

3.4.2 In cases of disagreement with the recommendations of the local authorities regarding the evaluation reports and/or program placement recommendations, the opportunity for an impartial hearing must be provided upon written request from the parent(s). *LOCAL AUTHORITIES SHOULD PROVIDE EVERY OPPORTUNITY TO EXHAUST INFORMAL AVENUES OF CONCILIATION*, but where conciliation is not reached, the school authority shall schedule the hearings in the following manner:

a. written notice of request for a hearing shall be supplied the local superintendent by the student's parent(s) and shall contain the points of contention with the recommendations. No technical language shall be required.

b. within 20 days of receipt of said parent's(s') request by the superintendent, the local authorities and the parent(s) shall select a mutually satisfactory hearing authority.

3.1.2 The committee(s) shall meet as a whole and:

a. be composed of personnel directly involved with providing educational and health services to the students as well as individuals knowledgeable in diagnosis and program planning for the areas of suspected exceptionalities of the diagnosed children. It is recommended that staff members acquainted with the needs of the linguistically different child serve on the committee.

b. be responsible for assuring that all appropriate placement criteria are met.

c. make written recommendations regarding the students' needs.

d. review, at least annually, the progress of students enrolled in special education programs.

e. make annual written recommendations regarding the students' program continuation, termination, or modification in accordance with their needs.

3.2 *Program Selection*

3.2.1 Determination of the most appropriate program for an exceptional student shall take into account varying types of information which are to be weighted, integrated and used as the basis for an initial program decision.

3.2.2 For program decisions, four general factors shall be taken into consideration, as follows:

a. severity of the disability

—In general, the more severe the handicapping condition, e.g., vision, hearing, intelligence, perception, etc., the more structured is the needed program.

b. achievement

—The degree to which a student is progressing relative to his individual potential.

c. success with regular program

—The portion of the regular education program in which the student is expected to make satisfactory progress.

l. a tape recording or other verbatim record of the hearing shall be kept.

m. the findings of the hearing authority with corresponding recommendations shall be reduced to writing and sent, by certified mail, to the parent(s), to the superintendent of the local education agency, and to their legal representatives within twenty (20) days of the conclusion of the hearing. The issues to be decided at such hearings are:

  1. Whether there has been a prejudicial departure by the local authorities from the evaluation and placement procedures as prescribed by special education regulations.

  2. Whether the local authorities have established, by a preponderance of the evidence presented in concurrence with special education regulations, that sufficient cause existed for its decision.

n. the decision of the hearing authority shall include findings of fact, conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed education program placement, it should include a statement as to what is an adequate and appropriate alternative educational program for the child. If the decision is to approve a proposed education program placement, it should include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs.

o. a copy of the tape recording or other verbatim record of the hearing shall be available at a reasonable cost if requested by a party to the hearing.

p. a summary of the proceedings at the hearing shall be made into which should be included any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties to the hearing.

q. *DECISIONS RENDERED IN THE IMPARTIAL DUE PROCESS HEARING AS REQUIRED BY SECTION 613(a) (13) OF P. L. 93-380, SHALL BE BINDING ON ALL PARTIES, SUBJECT ONLY TO THE APPROPRIATE ADMINISTRATIVE OR JUDICIAL APPEAL.*

r. the parent(s) shall be made aware of his (their) right to appeal the decision of the hearing authority to the courts or to a higher administrative authority in accordance with NMSEA regulations.

3.4.3 A local education agency may also request an impartial hearing where local authorities deem it necessary to ensure appropriate program placement when the nature or severity of the handicap is such that education in the regular program cannot be achieved satisfactorily.

c. after a hearing authority is selected, arrangements for his (their) payment shall be made by the local education agency, which shall be responsible for payment once the hearing is completed.

d. the hearing authority shall be knowledgeable regarding special education regulations. The hearing authority should be:

    1. Unbiased - not prejudiced for or against any party involved in the hearing.

    2. Disinterested - not having any personal interest at stake in the outcome, and

    3. Independent - not be an officer, employee, or agent of the local education agency.

e. within ten (10) days of the selection of the hearing authority, the local education agency shall give written notice by certified mail to the parent(s) of the name of the hearing authority and of the date, time, and place of the hearing.

f. said hearing shall be set on a date no sooner than thirty (30) days nor later than forty-five (45) days from the date of such notice. Any alteration of these days shall be made with mutual consent of parent(s) and local authorities.

g. parent(s) may be present at the hearing.

h. parent(s) may be represented by legal counsel.

i. outside educational and/or medical diagnostic evaluation data by independent qualified personnel may be submitted in evidence by the parent(s).

j. parent(s) shall be allowed to be present when evidence is offered by the local authorities though the hearing shall be closed to the public unless both parties consent to an open hearing.

k. a fair hearing shall be conducted by the appointed hearing authority who shall permit either party to call and examine witnesses, cross-examine witnesses, and introduce exhibits. The hearing authority may limit testimony so that reasonable time considerations may be made. Evidence will be admitted without regard to the technical rules of evidence, but the hearing authority may exclude any evidence which is not relevant to the issue or which would be excluded by the hearsay rule. The hearing authority shall make a determination solely upon the evidence presented at the hearing.

3.5 *Surrogate Parent(s)*

3.5.1 It is necessary to provide every child eligible for a public education with the protection of procedural due process. Under circumstances where a child's parent(s) are not known, are unavailable, or the child is a ward of the state, each child shall be referred to the appropriate branch of the New Mexico Social Services Agency of the Health and Social Services Department that the Social Services Agency might determine if the need for a surrogate parent exists. Where so determined, an "in loco parentis" or surrogate parent shall be appointed in the manner set by law, Chapter 254, Section 12-34-23, New Mexico Statutes annotated 1953, as amended 1973.

NEW YORK

Section 200.10. Procedural due process in identification, evaluation and educational placement. (a) A committee on the handicapped which has reason to believe that a child possesses a handicapping condition to a degree sufficient to warrant provision of special educational services, shall give notice to the parent of its recommendation to the chief school officer that th child be classified as possessing a handicapping condition requiring provision of special educational services. Such notice shall:

(1) Describe the proposed classification and the reasons why such classification was deemed appropriate for the child.

(2) Specify the tests or reports upon which the proposed classification was based.

(3) State that the school files, records and reports pertaining to the child will be available for inspection and interpretation. Such records shall be available for review, and for duplication at reasonable cost.

(4) Describe in detail the right to obtain a hearing in accordance with the provisions of subdivision (c) of this section if there are objections to the proposed action.

(5) Include a statement of procedures for appealing the decision resulting from the formal hearing.

(6) Include a statement indicating that the parent shall be afforded an opportunity to obtain an independent educational evaluation of the child and which shall include the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost to the parent.

(7) Except where the presence of a pupil in school poses a continuing danger to persons or property or threatens disruption of the academic process, assure that parent that the child will remain in his present educational placement until the chief school officer makes a decision in connection with any appeal brought pursuant to the provisions of subdivision (c) of this section.

(b) A committee which recommends to the chief school officer that there should be a change in the child's educational program or placement shall give notice to the parent of its recommendation.

Such notice shall:

(1) Indicate the availability of an informal hearing, at the request of the parent or the school, between the parents and school officials, to attempt resolution of conflicting points before a formal impartial hearing is required.

(2) Describe in detail the proposed change in placement and the reasons why such action is deemed appropriate for the child.

(3) Specify the test or reports upon which the proposed action is based.

(4) State that the school files, records and reports pertaining to the child will be available for inspection and interpretation. Such records shall be available for review, and for duplication at reasonable costs.

(5) Describe in detail the right to obtain a hearing in accordance with the provisions of subdivision (c) of this section if there are objections to the proposed action.

(6) Describe the procedure for appealing the decision resulting from the formal hearing.

(7) Indicate that the parent shall be afforded an opportunity to obtain an independent educational evaluation of the child and which shall include the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost to the parent.

(8) Except where the presence of a pupil in school poses a continuing danger to persons or property or threatens disruption of the academic process, assure that parent that the child will remain in his present educational placement until the chief school officer makes a decision in connection with any appeal brought pursuant to the provisions of subdivision (c) of this section.

(c) Within ten days after receipt of notice of proposed recommendation classifying a child as "handicapped" or within ten days after notice of a proposed change in educational program or placement, a parent may request, in writing, an impartial formal hearing which will be conducted in accordance with the following rules:

(1) The chief school officer shall personally hear and determine the proceedings or may, in his discretion, designate an impartial hearing officer to conduct the hearing. The chief school officer or hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him.

(2) A summary record will be made of the hearing.

(3) At all stages of the procedure, where required, interpreters of the deaf or interpreters fluent in the primary language of the child's home shall be provided at district expense.

(4) The chief school officer or his designee shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner so that all parties shall be afforded an opportunity to present evidence and testimony.

cluding, but not limited to, legal counsel and other professional persons in attendance at the hearing.

(5) Unless a surrogate parent shall have previously been assigned the impartial hearing officer shall, prior to the hearing, determine whether the interests of the child would best be protected by assignment of a surrogate parent.

(7) The hearing should be closed to the public unless the parent requests an open hearing.

(8) The parents, school authorities and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.

(9) If the child is over the age of eighteen, he or she shall have the right to attend the hearing.

(10) If the child has not attained the age of eighteen, the parents shall have the right to determine whether the child shall attend the hearing, except that upon a finding of the impartial hearing officer that attendance of the child would be harmful to his/her welfare, the child may be excluded from portions of or the entirety of the hearing.

(11) Where a chief school officer designates a hearing officer to conduct the hearing, such hearing officer shall make written findings of fact and a recommendation to the chief school officer within ten days as to the appropriate classification or educational placement. A copy of the proposed findings of fact and recommendation shall be transmitted by certified mail to the parents, to school authorities and their respective representatives with an indication that the recommendation is not binding upon the chief school officer.

(12) The parents, school authorities and their respective representatives may submit to the chief school officer, objections to the proposed findings of fact and recommendations within ten days from receipt of the hearing officer's findings of fact and recommendation.

(13) The chief school officer, where he conducts the hearing personally, shall render a decision in writing within ten days. Where a hearing officer has been designated by the chief school officer to conduct the hearing, the chief school officer shall render a decision in writing within ten days following the period during which the parent or school authorities may submit objections to the proposed findings of fact and recommendations. Such decision shall be based solely upon the record of the proceedings below and shall set forth the reasons and the factual basis for the determination.

(14) A decision of the chief school officer shall include a statement of procedures to be used for appealing such decision to the Commissioner.

(d) State administrative review.

(1) An appeal from the determination of a chief school officer may be initiated in writing by the parent or by school authorities within ten days after receipt of the determination sought to be reviewed. Such appeal shall be directed to the Commissioner of Education, who shall decide such appeal solely upon the record in the proceedings below. Either party may, however, submit statements in support or opposition to the determination sought to be reviewed. The Commissioner may delegate to the Assistant Commissioner for Education of Children With Handicapping Conditions the authority to decide such appeals. The decision of the chief school officer shall be affirmed if supported by substantial evidence.

(2) Except where the presence of a child in a school poses a continuing danger to persons or property or threatens disruption of the academic process, the child shall remain in his present educational placement pending review of the decision of the chief school officer by the Commissioner of Education or his designee.

(3) If either party to the appeal to the Commissioner of Education is not satisfied with his determination, such party may commence a proceeding pursuant to Article 78 of the Civil Practice Law and Rules to review such determination.

Section 200.11 Surrogate parents.

(a) Register. Each school district shall compile a register of individuals willing to appear on behalf of a child under circumstances where a child's natural parents or guardian are unknown or unavailable or where the child is a ward of the State.

(b) Qualifications. Persons selected as surrogate parents shall not be officers, employees, or agents of the local school district or State Education Department involved in the education or care of children, and shall to the maximum extent possible:

(1) Have no other interest which could conflict with their primary allegiance to the child they would represent.

(2) Be committed to acquaint themselves personally and thoroughly with the child and the child's educational needs.

(3) To the maximum extent possible, be of the same racial, cultural and linguistic background as the child they seek to represent.

(4) Be generally familiar with the State and local educational system.

RULES Governing Programs & Services for Children with Special Needs

DIVISION FOR EXCEPTIONAL CHILDREN
STATE DEPARTMENT OF PUBLIC INSTRUCTION
RALEIGH, NORTH CAROLINA 27611

remediation, enrichment and/or curriculum planning. The written program and committee recommendations will be used in the re-evaluation process in determining continued or changed placement.

(C) If in the school-based committee's judgement, added comprehensive, screening and assessment data is needed, the parent or guardian must be informed of the need and must provide consent in writing prior to any further action being taken.

(3) Administrative Placement Committee

(A) The membership of an Administrative Placement Committee should be selected from the following:

- (i) Chairperson, programs for exceptional children
- (ii) Chairperson of the appropriate school-based committee
- (iii) Superintendent or his designee
- (iv) General supervisor
- (v) School psychologists
- (vi) Other appropriate personnel

(B) The committee should have in membership a person of the same race as the child being considered for placement.

(C) The school-based committee recommends placement to the Administrative Placement Committee.

(D) The Administrative Placement Committee will review data on each child presented from the school-based committee's report and recommendations. The Administrative Placement Committee then renders a decision for placement of the child. All special placement is made by the Administrative Placement Committee.

(E) Once the Administrative Placement Committee has rendered a decision on the placement or services, one of the following procedures should be followed:

- (i) A conference is held with the parent or guardian and the following is completed:
  - (I) The parent or guardian is notified of the committee's decision.
  - (II) A written statement is drafted indicating that a conference has been held, that the parent is apprised of the committee's decision, and the parent is supplied a description of the program or service to be provided.
  - (III) The parent is told that he has the right to review the data, to challenge the data and to provide additional data that could have some effect on the placement of the child.
  - (IV) The parent is told about other agencies that can provide free evaluations if he is unable to pay for additional desired evaluations.
  - (V) The parent is furnished a copy of the appeal procedures and is apprised of his right to appeal the decision.

(ii) A letter is sent to the parent or guardian including the following:
  (I) The committee's decision concerning placement
  (II) A written description of the program or service to be provided.
  (III) A description of the rights of the parent including the right to review the data, to challenge the data and to provide additional data that could affect the placement of the child.
  (IV) A list of agencies that could provide free evaluations if desired.
  (V) A copy of the appeal procedures. The letter is sent by certified or registered mail with return receipt requested, unless waived by the parent.

(4) Re-evaluation: Each year the school-based committee should review the placement of all children in special educational programs in their school. Based on this review, the committee will make its recommendation to the Administrative Placement Committee concerning the future placement of the child. The parent or guardian must be notified of any change in placement following due process procedures. After a period of special placement not to exceed three years, an indepth re-evaluation is recommended. This indepth evaluation will be different for each categorical placement and should be designed to provide comprehensive information deemed necessary by the Administrative Placement Committee.

(5) A parent/legal guardian/surrogate parent or eligible student's requests to inspect or review their child's or their own records should be honored within a reasonable period of time, but in no case more than 45 days after the request has been made. The term records should not include a teacher's personal notes.

(6) A parent/legal guardian or eligible student has a right to a hearing to challenge the validity of the contents of the child's or their own record.

(7) Parental consent is required prior to release of records excepting the following:
  (i) School officials within the local educational agency who have legitimate educational interests.
  (ii) School officials of other local educational agencies in which the student intends to enroll.
  (iii) Certain authorized representatives of the state and federal government who are determining eligibility of the child for aid as provided under Public Law 93-380.
  (iv) All other persons may gain access to a student's records only with the specific written consent of the parent/guardian or eligible student.
  (v) Recipients of student records should be cautioned that pupil information may not be released to third parties without the consent of the parent/legal guardian or

eligible student.

(vi) Eligible students shall have access to their record upon oral or written request. Eligible students are those enrolled in a post-secondary institution or eighteen years of age or older.

(8) Information from a student's record should be furnished without the parent's or student's consent when required by a judicial order or any lawfully issued subpoena upon condition that parents/students are notified by the LEA of all such orders or subpoenas in advance of the compliance. Parents/legal guardians or eligible students should be provided with the opportunity to review and challenge their child's records or their own records prior to compliance of the school with the judicial order of subpoena. ✓

(9) Parental consent is required prior to placement or a change in placement. ✓

(10) Placement Procedures (Involuntary): It is recognized that in the most unusual circumstances it may become necessary to assign a child who has had the appropriate psychological and physical evaluation to a special program without parental consent. This is allowed by G.S. 115-179.1 of the Session Laws of 1974. However, it is recommended by the State Board of Education that such assignment be made only as a last resort, after other remedial measures to deal with the child's special needs have been attempted within the regular school program. Further, it shall be policy that such an assignment shall be made only upon recommendation of the Administrative Placement Committee and with approval of the local superintendent. The parent is entitled to appeal this action following due process procedures.

(11) Recommended and Required Screening and Evaluation Before Placement and Administrative Guidelines

- (A) Programs for Crippled Children
  - (i) Required Screening or Evaluation Before Placement: Medical Evaluation
  - (ii) Recommended Screening or Evaluation Before Placement:
    - (I) Educational evaluation
    - (II) Adaptive behavior evaluation
    - (III) Psycho-motor evaluation
    - (IV) Speech and language evaluation
    - (V) Hearing screening
    - (VI) Visual screening
- (B) Programs for Emotionally Disturbed Children
  - (i) Required Screening or Evaluation Before Placement:
    - (I) Educational evaluation
    - (II) Psychological and/or psychiatric evaluation

(ii) Recommended Evaluation Before Placement:

(I) Medical evaluation

(II) Speech and language evaluation

(C) Programs for Gifted and Talented Children

(i) Required Screening or Evaluation Before Placement:

(I) Educational evaluation

(II) Other information (see "Suggestions for Identifying Gifted and Talented Students" issued by the Division for Exceptional Children, State Department of Public Instruction.

(ii) Recommended Screening or Evaluation Before Placement: Psychological evaluation.

(D) Programs for Hearing Impaired Children

(i) Required Screening or Evaluation Before Placement:

(I) Educational evaluation

(II) Speech and language evaluation

(III) Audiological evaluation

(IV) Otological evaluation

(ii) Recommended Screening or Evaluation Before Placement:

(I) Psychological evaluation

(II) Adaptive behavior evaluation

(III) Visual screening

(IV) Ophthalmological evaluation

(E) Programs for Homebound Children

(i) Required Evaluation Before Placement: Medical evaluation

(ii) Recommended Evaluation Before Providing Services: Educational evaluation.

(iii) Administrative Guidelines:

(I) Local boards of education should develop practices concerning the conditions under which home instruction will take place. The following points should be considered: The presence in the home during the teacher's visit of a responsible adult member of the child's family; a suitable place of work including appropriate equipment, freedom from the distractions of noise and the presence of other children.

(II) The child shall receive with medical approval, a minimum of five hours instruction a week. Credit is to be granted by the child's home school for work satisfactorily completed. Teachers should maintain the usual public school register and submit, for information purposes only, contact and progress reports to the local superintendent and to the principal of the school in which the child is or should be permanently enrolled. Such reports should be made a part of the child's cumulative record.

EXHIBIT A

PROCEDURE FOR REVIEW UNDER CHAPTER 1293, S. B. 1238 (AN ACT TO ESTABLISH EQUAL EDUCATIONAL OPPORTUNITIES IN THE PUBLIC SCHOOLS: AND FOR OTHER PURPOSES)

The Act provides that any time a child has been or is about to be

(1) denied entry or continuance in a program appropriate to his condition and needs or

(2) placed in a program which is inappropriate, unsuitable or inadequate to his condition and needs or

(3) assigned to a special program when he is not a child with special needs,

the parent or guardian of such child must be notified by registered or certified mail, return receipt requested, of the action taken. Chapter 1293, Senate Bill 1238, § 10(1) and (2). This applies both to acts and omissions by State or local authorities. This means that any time a child with special needs (defined by the statute to mean any child who because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, environmental factors, or other specific learning disability is inhibited from achieving his full potential; including but not limited to, the educable, trainable, profoundly, and functionally retarded, emotionally disturbed, learning disabled, the physically handicapped or other impairments including hospitalized, homebound, or pregnant, the deaf or hearing-impaired, the language or speech-impaired, the blind or visually-impaired, gifted and talented, autistic, dependent, abused, neglected, multiple-impaired, and socially maladjusted --

Chapter 1293, Senate Bill 1238, § 4) is denied entry to or continuance in a special program, the parent or guardian mus be promptly notified. It also means that any time a child w special needs is placed in any program, the parent or guardi must be promptly notified. The Act necessarily contemplates that the parent or guardian of the child can initiate the re process if he feels his child is a child with special needs even when the State or local authority regards the child as fully capable of achieving his full potential in a regular program.

The notice to the parent must contain:

(1) a statement of the placement, impending placement or denial of placement with a brief statement of th reasons for the action taken. It should be noted that the act provides that ordinarily no change in the program assignment or status of a child with special needs shall be made within the period affo the parent or guardian to request a hearing, except that a change may be made with the written consent the parent or guardian. However, if the health or safety of the child or any other individual would b endangered by delaying the change in assignment, th change may be made but without prejudice to any rig that the child and his parents or guardian may have pursuant to the Act. Chapter 1293, Senate Bill 123 §10 (4).

(2) a statement clearly informing the parent or guardian that he is entitled to an initial hearing to review the determination of the local or State authority only if he requests such a review, in writing, not less than fifteen days nor more than thirty days from the date on which the notice is received.

(3) a statement clearly indicating the name and address of the entity to which the written request for review should be addressed. (i.e., the local school board or the Advocacy Council).

(4) a statement informing the parent or guardian that the hearing upon review of the decision will be closed unless the parent or guardian requests that it be opened.

(5) a statement informing the parent or guardian that he has access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination.

(6) a statement informing the parent or guardian that he is entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person, and to be represented by counsel at the hearing before either the local school board or the Advocacy Council.

(7) a statement that the child may appear at the hearing.

The preceding requirements are gleaned from a reading of the entire statute. Note Chapter 1293, Senate Bill 1238, §10(2),(3), (5). The Superintendent for Public Instruction and the Secretary of Human Resources are empowered to make, amend or revise rules and regulations for the conduct of hearings under this Act. Chapter 1293, Senate Bill 1238, §10(6). Copies of such rules should be filed in the Office of the Secretary of State.

REVIEW BEFORE LOCAL SCHOOL BOARD

The initial hearing should be before the local school board in all matters which are primarily educational. This contemplates that decisions placing or denying placement to a child in a program operated by a public school will be appealed to the local board of education. Chapter 1293, S.B. 1238, §10(2).

At the hearing before the local school board, the parent or guardian may introduce any reports, records, clinical evaluations or other materials on which the determination which is being reviewed was wholly or partially based or which could reasonably have had a bearing on the correctness of the determination being reviewed. Moreover, the parent or guardian is entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person and be represented by counsel. The child may also appear. Chapter 1293, Senate Bill 1238, §10(5).

The local official who made the determination that is being reviewed shall be present and shall occupy the position of a party adverse to the parent or guardian. This is implied from the nature of the Due Process hearings provided for under the Act.

The local school board shall make its determination within seven days of the hearing and shall state its conclusion in writing, supported by an explanation of the reasons for its decision. This shall be referred to as the decision of the local school board. The decision of the local school board shall be immediately sent to the parent or guardian by registered or certified mail, return receipt requested. It shall include a statement clearly informing the parent or guardian that its decision may be appealed to the State Superintendent for Public Instruction only if the parent or guardian requests such an appeal in writing within thirty days of his receiving the decision of the local school board. The name and address of the State Superintendent for Public Instruction should be set forth in the statement notifying the parent or guardian.

REVIEW BEFORE ADVOCACY COUNCIL

The initial hearing shall be before the Advocacy Council in all "human resource matters". This contemplates that decisions placing or denying placement to a child in a program operated by the Department of Human Resources or by a program not operated by the public schools will be appealed to the Advocacy Council. A procedure identical to the procedure outlined above for review before local school boards should be established. Similarly, the decision of the Advocacy Council should be immediately sent to the parent or guardian by registered or certified mail, return receipt requested. It should include a statement clearly informing the parent or guardian that the decision may be appealed to the Secretary of Human Resources only if the parent or guardian requests such an appeal in writing within thirty days of his receiving the decision of the Advocacy Council. The name and address of the Secretary of Human Resources should be set forth in the statement notifying the parent or guardian.

REVIEW OF DECISIONS OF LOCAL SCHOOL BOARDS OR OF THE ADVOCACY COUNCIL

Appeals from the decisions of local school boards. The Superintendent of Public Instruction is empowered to amend or revise rules and regulations for the conduct of such hearings. Among other things, the superintendent is permitted to appoint either a hearing officer or a board to hear such cases. Copies of the rules and regulations of the superintendent should be filed in the Office of the Secretary of State. Chapter 1293, Senate Bill 1238, §10 (6). Hearings to review decisions of local school boards should provide the child, parent and guardian due process. This is clearly contemplated by the Act. This means that the parent or guardian should be afforded a reasonable amount of time to prepare for the hearing before the superintendent's designee or designees. It also means that the parent or guardian is entitled to present evidence, to examine and cross-examine witnesses, to appear in person and to be represented by counsel. The child may also appear. Final decisions of the hearing officer or the Board appointed by the Superintendent should be in writing and should be supported by a short statement of the reasons for the decision. The parent or guardian should be advised of his right to obtain judicial review of the administrarive determination. The statute provides that any appeal of these decisions to the general court of justice must occur within thirty days after notice of such decision. The parent or guardian should be advised of this statutory requirement. Chapter 1293, S.B. 1238, §10(2).

Appeals from the decision of the Advocacy Council

Similarily, the Secretary of Human Resources is empowered to promulgate rules and regulations for the conduct of hearings upon review of the determination of the Advocacy Council in human resources matters. He too may appoint either a hearing officer or a Board to hear such cases. Needless to say, the due process requirements of notice and opportunity to be heard must adhere to any rules promulgated by the Secretary.

The Act necessarily requires that local and State officials be apprised of their statutory obligations. The Act requires that local decision-making be accompanied by appropriate notice to the parent of the affected child. It is the responsibility of the Superintendent for Public Instruction and the Secretary of Human Resources to promulgate rules and regulations to insure that an adequate local hearing procedure is available under the Act. These rules must be filed in the Office of the Secretary of State. At this point in time, it is also important that the Superintendent and Secretary designate a hearing officer or officers for State-level appeals.

Hopefully the availability of review before the local school board in educational matters and before the Advocacy Council in human resources matters will minimize the number of cases that are appealed to the Superintendent or to the Secretary.

EXHIBIT B

MODEL STRUCTURE FOR APPEALS TO STATE SUPERINTENDENT OF PUBLIC INSTRUCTION FROM DECISIONS OF LOCAL SCHOOL BOARDS

The State Superintendent of Public Instruction hereby designates [name of hearing officer] as hearing officer (or as member of Hearing Board) to hear all appeals from decisions of local school boards concerning determinations made pursuant to Chapter 1293, 1973 Session Laws (1974 Session).

§1 - Designation of Hearing Date;

Upon written request from a parent or guardian of an affected child, received not more than 30 days from the date of the decision of the local school board, the hearing officer shall designate a hearing date not more than 30 days from the date that the request was received.

§2 - Notice to Parent of Guardian;

The hearing officer shall notify the parent or guardian of an affected child, at least 20 days before the designated hearing date, by registered or certified mail, return receipt requested, that:

a) a hearing is scheduled for [date designated] to review the decision of the local school board.

b) the hearing will be held at [location] at [hour of day] before [name of designated hearing officer.

c) if the parent or guardian or attorney is unable to attend, a delay must be requested. A delay may be granted by the hearing officer if:

  i) at least 10 days before the designated date, for compelling reasons, the parent or guardian or attorney informs the hearing officer that he is unable to attend or,

  ii) at any time before the hearing, because of an emergency, the parent or guardian or attorney informs the hearing officer that he is unable to attend.

If the hearing officer finds that a delay should be granted, he shall designate an alternate hearing date. The parent or guardian or attorney shall be notified of the alternate date as provided for in this section.

d) the hearing will be closed unless the parent or guardian or attorney requests, in writing, at least 10 days before the hearing date, that it be open to the public.

e) the child may attend the hearing if the parent or guardian or attorney so desires.

f) the parent or guardian or attorney is entitled to have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination.

g) the parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person and to be represented by counsel.

h) notification of the determination of the hearing officer will be forwarded to the parent or guardian by registered or certified mail, return receipt requested, within 30 days of the termination of the hearing. Any appeal of this decision to the courts must occur within 30 days after notice of the decision of the hearing officer is received.

§3 - The Hearing;

a) The hearing before the hearing officer shall be informal. Technical rules of evidence need not be observed. However, the hearing officer shall cause a full and complete record of all proceedings to be kept. Upon payment of costs, a transcript of the hearing shall be made available to the parent or guardian or attorney upon request. If the parent or guardian is indigent, as determined by the hearing officer upon appropriate criteria, a transcript will be provided without cost.

b) Parties; The parent or guardian shall be designated the appellant. The local school board or an authorized representative thereof shall be designated the appellee. The parent or guardian may appear by way of counsel. An appellee must appear.

c) Conduct of hearing;

1) The hearing officer shall occupy the position of an impartial and unbiased judge; the standard for making the determination shall be the best interest of the child and no child shall be excluded from receiving education or service for any reason whatsoever.

2) The hearing officer shall direct that the appellant proceed first. The appellant shall then present his entire case. He may introduce evidence and call witnesses. He may challenge the results or conclusions of written reports by his own testimony, the testimony of the child, or the testimony of experts. Any evidence tending to show that the determination of the local school official or of the local school board was unreasonable shall be received by the hearing officer.

3) The hearing officer, at the close of the appellant's case, shall direct that the

appellee proceed. The appellee may introduce all evidence tending to show the reasonableness of the determination being reviewed. The appellee may examine the child only with the consent and under the direction of the hearing officer.

4) The appellant shall, at the close of the case of the appellee, be given an opportunity to rebut the contentions of the appellee.

SPECIAL EDUCATION IN NORTH DAKOTA

REGULATIONS

DUE PROCESS

(PROGRAM PLANNING FOR HANDICAPPED STUDENTS)

SUPPLEMENT TO GUIDE IA - LAWS,
REGULATIONS AND GUIDELINES
FOR SPECIAL EDUCATION
FOR EXCEPTIONAL STUDENTS

SPECIAL
EDUCATION
IN NORTH
DAKOTA

a part of the whole

DEPARTMENT OF PUBLIC INSTRUCTION
M. F. PETERSON, SUPT.
BISMARCK, N. D.
58505

INTRODUCTORY STATEMENT

Procedural safeguards are necessary for all children and are particularly relevant for any child to be enrolled in a special education program. Any alteration of a student's program from the point of extended evaluation to possible placement in a special education program must involve parents and qualified school personnel. Procedural regulations as given in this guide are to be followed in planning a program for every handicapped child.

The school district board of education or its designated representative is responsible for carrying out all procedural regulations as given in this document.

The following steps are to be implemented during the 1975-76 school year:

1) All regulations are to be followed as of December 15, 1975, for any child being considered for a special education service.
2) All regulations shall be followed after December 15, 1975, for students who transfer from other special education programs.
3) For all students enrolled in a special education program prior to November 1, 1975, a review of all procedures should be undertaken. This review shall be made during the school year 1975-76 to include:
    a. Adequacy of the evaluation.
    b. Parents have consented to placement and at least one conference has been held to review all information related to the placement.
    c. An individual educational plan has been developed, signed by the parents, and made a part of the students cumulative file. These steps are to be completed by May 20, 1976.
4) The regulatory procedures will then be followed in subsequent years.

These regulations are developed under the guidelines of P.L. 93-380, Title VI-B - FY 1975.

DUE PROCESS

(Program Planning For Handicapped Students)

I. REFERRAL FOR STUDENT EVALUATION

Responsibility	Regulation
1. Referral Review: A superintendent or principal is responsible for reviewing instructional alternatives which may improve the student's existing educational program prior to referral.	A. In considering instructional alternatives review of the student's curriculum, instructional methods used, grouping practices, and use of other school district resources (basic skills) will be necessary. (See Form I example, p. 13.) B. A written record of the proposed alternatives must be a part of the student's permanent file prior to referral to the director of special education for evaluation.
2. Referral Process: A superintendent or principal of the school district is responsible for the disposition of referrals as given in the accompanying regulations.	A. WHO MAY REFER Any parent, teacher, agency, physician, social worker, juvenile court judge, or the student himself if 18 years of age or over, may make a referral for evaluation. B. WHO SHOULD BE REFERRED 1) Any student who exhibits significant academic, behavioral or physical deficits should be referred. 2) Any student who presents substantial risk of school failure should be referred. C. SPECIAL CONDITIONS FOR REFERRAL 1) Teachers may refer any student during the school year who is being considered for nonpromotion. 2) A teacher or principal may refer any student who is not promoted at the end of a school term. 3) Referral of dropouts, suspended or expelled students: The superintendent or principal is responsible for referral of any student who is suspended or expelled or who drops out of school for possible special education evaluation. This provision includes also students of first grade age who early in the year are requested to withdraw.

X.

Responsibility	Regulation
	Required Information on Referral Form The referral form to be used must include: A. Is the student currently enrolled in a school program? B. Must indicate the primary language used in the home, if other than English. (See Form I for example Referral Form, p.13.)

II. STUDENT EVALUATION PROCEDURES

Responsibility	Regulation
1. Evaluation Procedure: The superintendent, principal or director of special education makes the recommendation for evaluation of a student.	Evaluation Process: A. Screening of all students may be conducted by special education personnel or others authorized by the school board. Parental approval may be requested but is not required. B. Additional screening and observation of individual students may be provided by special education personnel as an intermediate step between general screening and formal evaluation. Parental approval may be requested but is not required. C. Individual formal evaluation consisting of extensive testing or observation involving one or more specialists requires written permission or written request from parents. (See Form II - Notice of Intent to Conduct an Evaluation, p. 14.) D. A superintendent, principal or director of special education must receive a written report of all evaluations. E. Before special education services for the handicapped children may begin, the parents must be informed in conference with the principal or special education personnel of the results of the evaluation and must approve a written educational plan. (See Form IV - Development of the Educational Plan, p. 17, 18, and Form IIIa-Approval of Placement for Special Education, p. 15, also Form IIIb, p. 16.)

Responsibility	Regulation
2. Surrogate Parents: Whenever special education decisions are being made, the student must be protected by procedural due process. Under certain circumstances the school superintendent, principal, special education director or other agency personnel must request the Department of Public Instruction to appoint a surrogate parent. Surrogate parents will be available in each quadrant of the state appointed and trained by the Department of Public Instruction from nominations made by Title VI-B Professional Consultants Committee. Surrogate parents will be trained and paid at an hourly rate for up to 20 hours of educational consultation per year from Title VI-B funds. Surrogate parents appointed under this provision are advocates for the student in educational matters. Wherever the word "parent" is used in this document it will include surrogate, legal guardian or foster parent.	A. Surrogate parents must be appointed under the following conditions: 1) The student has no parent, foster parent or legal guardian. 2) The legal guardian is engaged professionally in child-care or education of children. 3) The student is a ward of the state.
3. Information gathering for Placement Committee. Following a formal evaluation the superintendent, principal or director of special education is responsible for facilitating all steps in the evaluation process and collecting necessary information prior to the meeting of the Placement Committee.	A. In cases not requiring a formal evaluation, the specialist (speech clinician or specific learning disabilities teacher) will be responsible for gathering student information and meeting with parents. (See Part II - Student Evaluation Procedures, p. 2.) B. All of the individuals listed below do not necessarily have to be included in the Placement Committee but information from all of the areas must be included in the data collected for the Placement Committee. 1) Parents: A parental interview by the administrator, social worker, or other responsible professionals. Information to be obtained from the parents: a) Developmental history of the student, (speech, movement, eating, interests, other significant things remembered by parents).

b) Family members and any significant information about inter-family relationships.

c) Medical history (long term medical problems, operations). Should student see a pediatrician, ophthamologist, audiologist?

d) School experiences (parents impressions of capabilities, weaknesses, concerns, teachers' reports).

e) Current educational status, (parental concerns, descriptions of student at home, reaction to school). Many other important questions will be asked in the course of the interview dependent on the individual situation.

2) Student's Teacher:

Information to be obtained from the present or past teacher.

a) Specific areas of strength within the current curriculum, physical abilities and social abilities.

b) Student's interests (type of interests, level of participation, sharing of interests with peers and adults).

c) Specific observations of student (how he performs in different situations and various tasks, how student approaches a problem or task and what processes are used in performing the task).

d) Teachers description of specific academic concerns, social behavior in and out of class.

Other record observations should be recorded in gathering information for the evaluation process.

3) Psychologist or Supervised School Psychologist.

Information to be obtained from the psychologist or:

a) Level of normative intellectual functioning. Areas of general strength and weaknesses.

Responsibility

Regulation

b) Reactions to situations, test items and general impressions.

c) Student's handling of stress, threshold of difficulty and other general reactions.

d) Interpretation of information to include recommendations on ways th student may best cope in the educational setting, relationship with peers and adults.

The Psychologist will obtain other important information on the student and his environment. This professional should be a part of the Placement Committee.

4) Educational Evaluation (learning disabilities, educational evaluation):

Information to be gained from the educational evaluation:

a) Observation of student in number of settings, situations and tasks.

b) Specific strengths and weaknesses - cognitive, emotional, physical - as shown through recognized educational tests.

c) How the student received processes and uses information.

d) Specific level of skill development and specific gaps in skills.

5) Medical - this should include a report from any appropriate specialist recommended in the evaluation process.

6) Other - speech/language, hearing, vision, etc.

III. THE PLACEMENT COMMITTEE AND THE DEVELOPMENT OF AN EDUCATIONAL PLAN

Responsibility

1. The Placement Committee:

The superintendent or principal is responsible for bringing together professionals and parents and, as chairman of this Placement Committee, to share information and make recommendations for placement and for an educational plan for the student.

Regulation

A. Placement Committee Procedures:

1) The Placement Committee will include principal, teachers, director of special education or program coordinator, educational evaluator or psychologist, and parents.

2) The following must be considered during the Placement Committee meeting:

   a) Present educational status of the student.

   b) Description of strengths and weaknesses in academic, behavioral, and physical areas.

   c) The individual needs of the student to include learning, social interests, vocational, and physical needs and interests.

   d) These needs are to be considered in terms of planning the best possible program for the student.

   e) If resources including an appropriate school program are not available locally, what are the alternatives?

   f) The student must be placed in the most normal and appropriate school setting.

   g) The parent's input at the committee meeting will be essential in making placement and educational program decisions. Professional staff may meet to review information prior to meeting with parents. Parents, foster parents, guardian, or surrogate parents, however, must be included in the Placement Committee meeting.

Responsibility	Regulation
2. Parental Approval: The superintendent, principal or director of special education is responsible for obtaining parental approval for placement in any special education service prior to the development of the complete educational plan.	A. Communication must take place with the parents explaining the evaluation results and tentative recommendations concerning the student's placement in a special education program (may be completed as part of the Placement Committee Meeting - See Form IIIa - Approval for Enrollment in Special Education Program, p. 15).
3. Educational Plan: The superintendent, principal, or director of special education is responsible for the development of a written educational plan within 30 days of the student's placement in a special education program.	A. The written plan must be approved by the parents and the approval and the plan become part of the student's permanent record. (See Form IV - Educational Plan, pp. 17, 18.) B. If the parents do not approve placement they must be advised of the hearing procedures as outlined in this document. (See Section V - Hearing Procedures, p. 8.)

IV. MONITORING THE EDUCATIONAL PLAN

Responsibility	Regulation
1. Student Progress Reports: A superintendent or principal is responsible for reporting student progress on the educational plan at least three times per year to parents.	A. This progress report may be sent to the parents along with any other reporting procedure used by the school district. B. The goals established in the plan are the basis for reporting student progress. C. At least one of these three reports must be carried out in a personal conference with the parent or guardian.
2. Annual Review: The superintendent, principal or director of special education is responsible for an annual review of placement decisions and student progress on the educational plan.	A. Parents are to receive an annual progress report that notes in writing any changes in the program plan or recommendations for placement change. The report form will include parental approval of the plan and continued placement in a special education program. (See Form V, p. 19.)

V. HEARING PROCEDURES

Every parent has a right to a hearing which will provide a review of parental concerns and produce a decision resolving questions involved in the special education placement.

Attempts should be made to resolve disputes through the usual channels of parent-school communication including the school board and county special education board meetings.

POSSIBLE REASONS FOR A REQUEST FOR A HEARING.

A. If a child has been recommended for evaluation and permission has not been granted by the parents, the school district may request a hearing.

B. If a handicapped student is not being provided an educational program or the present special education service is not considered appropriate, the parents may request a hearing.

C. If the school district has recommended placement in a special education program and there is disagreement over the recommendation, the school district or the parents may request a hearing.

D. If parents want a student enrolled in a special education program and school district says he doesn't need to be there, either the school district or parents, may request a hearing.

Responsibility

1. Arranging for a Hearing:

   The following procedures are to be followed in preparing for the hearing. The school district superintendent or his designee are responsible for arranging and preparing for the hearing.

Regulation

PROCEDURES PREPARATORY TO THE HEARING:

A. An administrator of a school district or a director of special education or a parent or legal guardian may request that a hearing be arranged by the Department of Public Instruction, Special Education. State Special Education personnel will forward an application to the inquirer to be returned to the Department within ten calendar days.

B. Within ten days of receipt of an application for a hearing, the Department of Public Instruction, Special Education will review the application and appoint a qualified state hearing officer.

Responsibility	Regulation
	C. Within ten days of appointment the hearing officer will forward letters to all parties setting a date within 20 days of the date of a letter of notification of time and place for the hearing. The hearing officer will outline in written form all procedures to be used at the hearing. D. After receiving written notification that a hearing will be held, the school administrator responsible must make available to the parents upon request all school records and files pertaining to the student. E. The parent must be informed of the right to request the attendance of local or state Department of Public Instruction personnel who may have testimony relevant to the needs, abilities, proposed programs, or status of the student. F. The educational status of a student cannot be changed until a final decision is rendered by the hearing officer. G. The hearing officer may request consultation from other school district personnel or state agency personnel. The hearing officer may also ask for the appointment of an impartial hearing board composed of three members outside of the county and school district in question. The board would include at least two persons with educational expertise relevant to the student's special needs.
2. Conduct of the Hearing: The hearing officer will conduct the hearing following the procedures in the regulations.	A. The hearing officer shall preside and shall conduct the hearing in a fair and impartial manner. B. The parent and school district may bring representatives including legal counsel, agency personnel, or others to the hearing.

Responsibility	Regulation
	C. The parent and school district or their representatives shall have the right to present evidence and testimony. D. The parent or school district or their representative shall have the opportunity to question all witnesses at the hearing. E. The burden of proof as to the adequacy and appropriateness of the proposed placement or program shall be on the school district. F. A tape recording or other verbatim record of the hearing must be made. Such records shall remain under the control of the state education agency. The parents and the school district shall have a right to a copy of this record upon request. G. If the primary language of the parents, if other than English, or in the case of deaf individuals involved, interpreters or other forms of interpretation needed shall be provided by the school district.
3. Decision of Hearing Officer: The decision of the hearing officer is to be issued within ten calendar days of the hearing and shall be binding on all parties unless appealed.	A. The decision of the hearing officer will be written in the primary language of the home in addition to English, if necessary. The decision will be sent to the parent or guardian, the school district, and the state education agency. B. The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing. C. The written decision shall include findings, conclusions and reasons for them. If the decision is to disapprove a proposed education plan for a handicapped student, it shall state what would be an adequate and appropriate alternative plan for the student. D. The decision shall include a statement of the procedures necessary to obtain an appeal of the hearing officer's decision.

Responsibility	Regulation
4. Appeal Procedures: The school district or the parent may appeal the decision of the hearing officer.	A. Within ten days after a decision has been made, an appeal of the decision may be initiated by the parent or the school district to the State Board of Public School Education, M. F. Peterson, Executive Secretary, Department of Public Instruction, State Capitol, Bismarck, ND 58505. If, after an appeal to the State Board of Public School Education, there is dissatisfaction with the decision, either party has recourse through the courts and laws of the state.

OHIO

APPENDIX B

PROPOSED DUE PROCESS SAFEGUARDS

SECTION I: PRE-ASSESSMENT ACTIVITIES

PRIOR NOTICE

Appropriate Professional School Personnel Will Contact the Parent and Complete the Following:

A. Provide the parent with an accurate and concise description of the problem and the reason the school would like to complete formal assessment procedures.

Except in cases where the parent indicates otherwise all essential pre-assessment communication activities will be completed in the primary language of the parent.

Comment: If the parent does not have a friend or relative who can help with the language difference, the school should provide a foreign language interpreter.

Activities A through F may be completed in several different ways. The parent might wish to come to school and meet with several professionals at the same time. In other cases, information may be communicated by only one professional. The visiting teacher or counselor might be helpful in completing some of these activities.

B. Inform the parent of the placement procedures that will be followed, and advise the parent of his prerogatives in these procedures.

Legal considerations dictate that the following points be communicated to the parent regarding the placement procedures and parental prerogatives in these procedures:

1. Sequential order of critical decision points in the placement procedures (e.g., referral for psychological assessment, assessment completed, placement decision reached, communication of results and decision to parent);
2. Name(s) of person(s) responsible for providing assessment information (e.g., school psychologist);
3. Name(s) of person(s) responsible for developing program placement and/or intervention recommendations, and making the placement decision;
4. Parent has the right not to give permission for the psychological assessment and/or program placement;

5. Parent has the right to have conferences (or communicate in other ways) with professional school personnel regarding any aspect of the assessment and placement procedures;

6. Parent has the right to legal counsel and outside consultation on any aspect of the case;

PARENTAL OPPORTUNITY TO EXAMINE RELEVANT RECORDS

7. Parent has the right to review and examine all relevant information in the pupil's school record;

8. Parent has the right to have a review of the program placement decision reached at the building level.

This information will be given in written form and, whenever possible, in both written and oral form.

Comment: While it is essential that all points be explained to the parent, it is suggested that information should not be read to the parent or be presented in an extremely formal manner. Information should be communicated as part of establishing a helping relationship with the parent.

It is important that these descriptions and explanations do not "gloss over" the importance of the placement procedures. To the extent possible, the parent should have a full understanding of the importance of the placement procedures.

To protect all parties concerned, the school district should develop specific written descriptions and forms to be used with the parent. Written statements should be in language that is as clear and understandable as possible. In circumstances where it is thought that the parent will have difficulty understanding the written statements (e.g., illiteracy, foreign language) all information will be communicated orally.

If a parent requests a conference (item 5 above) it will be held at a time that is mutually agreeable to all parties and within a reasonable length of time following the request. The time from the date of the request to the date of the conference should not exceed 15 school days.

Comment: The parent may wish to bring to the conference legal counsel, a friend, or other persons knowledgeable about the pupil's problem.

C. Provide the parent with a description of the assessment tests and instruments that will be used with the pupil.

Legal considerations dictate that the following points be communicated to the parent regarding the assessment instruments:

1. Names of the instruments that are likely to be used;

2. What these various instruments measure;

3. When applicable, the limitations of each instrument particularly in terms of the pupil in question.

Comment: If there are special considerations that will be given in analyzing the pupil's test performance, these considerations should be communicated to the parent.

D. Ask the parent to indicate any factor he thinks might adversely affect the pupil's performance on the tests and instruments to be used (e.g., speech and hearing problem, English used as a secondary language).

E. When applicable, provide the parent with a complete description of possible special education program placements that the psychological assessment might indicate.

Comment: If the reason for referral is to determine the pupil's eligibility for a specific special education program, the parent should be given a description of the program in question. In other cases the school district could provide a service by giving the parent a written description of the range of special education services provided by the district.

PRIOR NOTICE

F. In cases where direct psychological services are to be provided (e.g., testing, interviewing the pupil, etc.), written parental permission will be obtained prior to the psychological assessment.

No psychological assessment will be done without parent notification. Only in unusual circumstances will a psychological assessment be completed without written parental permission. Unusual circumstances could arise in a case where the parent refuses to give permission for an assessment to be completed, and professional school personnel agree that the pupil is in a program that clearly does not meet his needs. In these special cases, a decision to complete or discontinue the case will be made through the case review process.

Comment: Written permission may be obtained by mail.

If the parent is hesitant about signing the parent permission form, he should be given time to think over his decision.

SECTION II: ASSESSMENT ACTIVITIES

In Assessing a Pupil for Possible Program Placement and/or Development of Appropriate Intervention, the Following Should Be Completed:

A. Assess the pupil's aptitude and academic achievement through the use of appropriate testing instruments.

ADOPTIVE ASSESSMENT PROCEDURES

Except in cases where the parent indicates otherwise, the administration of testing instruments will be done in the pupil's primary or home language. Exception will be made to this guideline when it has been shown that the pupil's performance is enhanced by administering the instruments in English. Additional requirements regarding adoptive assessment procedures are contained in State Board of Education Program Standards EDb 215-09 C 6 and 7.

The administration of the aptitude and academic achievement instruments, as well as other instruments used in the assessment, will be done only by persons approved by the appropriate educational and governmental agencies.

Comment: Depending on the reason for referral, the achievement instruments might include standardized tests, and/or concise determination of the achievement level of the pupil in terms of the schools' curriculum.

When a translator is used in the administration of psychological tests, it is essential that he fully understand his role. The translator should be instructed to translate with as little alteration as possible.

B. Assess the pupil's classroom behavior through the use of an appropriate instrument(s).

Comment: Classroom behavior could be assessed with a formal instrument, and/or informal observation by the psychologist or teacher.

C. Complete a medical evaluation that reflects the case need for such medical information.

Comment: Depending on the case, medical evaluation would range from a health screening prior to the psychological assessment, to a diagnostic evaluation by a team of medical specialists. A school nurse could be involved in providing a minimal health evaluation. This would include at least a vision and hearing screening and a review of the pupil's health records.

D. Items A through C describe a minimum assessment package. Whenever possible, information should also be gathered on such factors as the pupil's learning style, reinforcement patterns, interests, attitudes, etc.

SECTION III: POST-ASSESSMENT ACTIVITIES

Following the Completion of Assessment Activities and Prior to a Program Placement and/or the Initiation of an Intervention, the Appropriate Professional School Personnel Will Contact the Parent and Complete the Following Activities:

A. Remind the parent of his prerogatives in the placement procedures including the right not to give permission for the program placement and/or intervention being recommended by the school, and the right to legal counsel and/or outside consultation.

Except in cases where the parent indicates otherwise, essential post-assessment communication activities will be completed in the primary or home language of the parent.

Comment: To protect all parties concerned it is suggested that written descriptions and forms be developed and used with the parent. Written statements should be written in language that is as clear and understandable as possible. In circumstances where it is thought that the parent will have difficulty understanding the written statements (e.g., illiteracy, foreign language) all information should be communicated orally.

Much of the organization for carrying out these proposed due process safeguards has been purposefully left to the discretion of the individual district.

Consideration should be given to the appropriate involvement of older age pupils in the post-assessment procedures.

B. The psychologist will provide the parent with a description of the results and interpretation of the psychological assessment.

The description of the results of the psychological assessment will include any factors that may have adversely affected the pupil's performance on the tests and instruments used (e.g., hearing problem, cultural bias in the tests).

C. Provide the parent with pertinent information regarding the pupil's school performance and behavior that was considered in developing the program placement and/or intervention that the school is recommending for the pupil.

D. Provide the parent with an explanation of the program placement and/or intervention that the school is recommending for the pupil.

Legal considerations dictate that the following points be communicated to the parent regarding the program placement and/or intervention that the school is recommending for the pupil:

1. When applicable, a description of the various program alternatives for which the pupil is eligible including the program placement and/or intervention being recommended by the school;

2. Reason(s) the school is recommending a particular program placement

and/or intervention;

3. Implications of the recommended program placement and/or intervention for the pupil's future educational and occupational alternatives;

4. Any anticipated difficulty that the pupil might experience if the recommended program placement and/or intervention is implemented (e.g., loss of peer status).

5. Parent has the right to have conferences (or communicate in other ways) with professional school personnel regarding any aspect of the program placement and/or intervention.

   If a parent requests a conference, it will be held at a time that is mutually agreeable to all parties and within a reasonable length of time following the request. The time from the date of the request to the date of the conference should not exceed 15 school days.

Comment: Prior to implementing the proposed due process safeguards, it would be helpful for the school to review its method of reaching placement and intervention decisions. It is suggested that the principal, psychologist, teacher, and other professional school personnel should all have input before the decision is reached. The decision and the responsibility that it entails should be a shared one. The school may wish to develop a case staffing procedure to facilitate communication.

Explanations to parents must be done with as much openness and candor as possible.

If the pupil is to be placed (or continued) in a special education program, the parent should be informed of the procedures that will be used to assess the pupil's progress in the program. Progress should be reviewed in accordance with State Board of Education Program Standards requirements.

The parent may wish to bring a friend or other person knowledgeable about the pupil's problem.

PREROGATIVE FOR
INDEPENDENT EVALUATION

E. Provide the parent an opportunity to present information relevant to the program and/or intervention that the school is recommending (e.g., results of psychological assessment done by persons not employed by the school district). The parents may seek an independent evaluation, and should be informed of their prerogative to do so.

PARENTAL OPPORTUNITY
TO EXAMINE RELEVANT
RECORDS

F. Provide the parent an opportunity to review and examine all records on which the development of program placement and/or intervention recommendation is based.

Comment: It would be advisable to prepare for the parent a brief summary of the critical aspects that were considered in developing the recommendations.

G. If the parent disagrees with the program placement and/or intervention decision and wishes a case review, remind the parent of the procedures to follow in requesting such a case review and appeal (see Section IV).

H. When applicable, advise the parent where he might seek additional help for the pupil outside the school (e.g., community agency).

PRIOR NOTICE

I. Obtain written parent permission in cases where the school is making any one of the following program placement decisions:

Comment: Written permission may be obtained by mail.

1. Placement of a regular class pupil in any type of special education program;

   (The term "special education program" refers to the programs and services defined in State Board of Education Program Standards.)

2. Continuation, alteration or termination of the pupil's present special education program.

   Comment: The parent would not have to give written permission if the pupil is no longer eligible for the program. In such a case the parent would be notified of the reason for the program change.

As part of the parent permission process, the parent will be provided a written description of the program and, whenever possible, the program description will also be communicated orally.

No program placement and/or intervention decision will be implemented without parent notification. Only in unusual circumstances will a recommended program placement be implemented without written parental permission. Unusual circumstances could arise in a case where the parent refuses to give permission for a program change, and the pupil is no longer eligible for the program. In these special cases, a decision to implement the recommended program placement will be made through the review process.

Comment: In circumstances where it is thought that the parent will have difficulty understanding the written description (e.g., illiteracy, foreign language) the description will be given orally.

IMPARTIAL DUE PROCESS HEARING

The occurrence of a case review and appeal should be viewed as a significant event. Legal considerations dictate that the school district should develop written procedures for conducting case review and appeal activities. These procedures should contain at least the following points. First, the Superintendent or his designee is responsible for carrying out case review and appeal activities. Second, the written procedures should contain a description of the district's method of reaching the case review and appeal decision. Third, a description of the way in which the case review and appeal conference will be conducted should be developed including the appointment of an impartial hearing officer. It is essential that the case review and appeal conference take the form of a case hearing.

Comment: Written procedures should provide for an impartial and independent review decision making process. Person(s) making review decisions should not have prior knowledge of the particulars in the case. To this end the case review and appeal hearing should be conducted by an impartial person appointed by the Superintendent. The procedures adopted by the school district to select this person shall clearly insure impartiality. The written procedures should also specify that the building principal immediately contact the reviewing authority when a case review situation arises.

The parent might seek a case review and appeal in a situation where he wants the pupil to receive a different type of special education service other than the one decided upon by personnel working at the building level.

There are two types of cases that will be reviewed. First, there are cases in which the parent is requesting a review of the pupil's case. This situation would arise when the parent is not in agreement with the decision made at the building level. Second, there are cases in which appropriate professional school personnel are asking for a review decision in a case where unusual circumstances exist.

Unusual Circumstances: Unusual circumstances exist only when both of the following conditions are met: (1) the parent refuses to give permission for psychological assessment and/or program placement, and (2) it is decided at the building level that the pupil is in a program that does not meet his needs and/or for which he may not be eligible, and thus assessment and/or placement is essential.

Comment: This provision permits, in rare instances, the school to provide a pupil assessment and/or special program services without the expressed consent of the parent. Since it is a serious matter to provide these services without this expressed consent, the decision as to whether services should be provided is determined at the case review and appeal level.

The first condition would also be met if, after extensive effort, the school is unable to contact the parent or the parent does not respond to school communiques. This extensive effort should include telephone calls, a home visit, and mailed notices.

Comment: Registered mail should be used as part of the extensive effort to contact the parent.

Both types of review cases should be conducted in a similar manner. The person responsible for carrying out case review and appeal activities will see that the following activities are completed prior to making a case review decision:

A. Inform the parent that the case is being reviewed, and give the reason for this review.

Except in cases where the parent indicates otherwise, essential case review communication activities will be completed in the primary or home language of the parent.

Comment: If the parent does not have a friend or relative who can help with the language difference, the school should provide a foreign language interpreter.

In some cases the person responsible for the review and appeal activities will be unable to contact the parent. If, after extensive effort (described above), the parent cannot be contacted or a parent does not respond to communicques, a case review decision will be made in accord with the district review procedures. In this type of case a review decision will be made within 20 school days of the day the case was referred for review.

B. Inform the parent of the review and appeal procedures that will be followed, and advise the parent of his prerogatives in these procedures.

Legal considerations dictate that the following points be communicated to the parent regarding case review procedures and parental prerogatives in these procedures:

1. Sequential order of critical points in the case review and appeal procedures;
2. Name(s) of person(s) who will be providing information that will be used in making the case review decision;
3. Name(s) of person(s) who will be responsible for making the case review decision;
4. Parent has the right to have a case review and appeal conference;
5. Parent has the right to legal counsel and/or outside consultation on the case;
6. Parent has the right to compel the attendance of any LEA staff member.

This information will be given in written form and, whenever possible, in both written and oral form.

If a parent requests a case review and appeal conference, it will be held at a time that is mutually agreeable to all parties and within a reasonable length of time following the request. The time from the date of the request to the date of the case review and appeal conference should not exceed 15 school days.

PREROGATIVE FOR
INDEPENDENT EVALUATION

C. Obtain relevant case information from the parent. This may include information from knowledgeable persons outside the school (e.g., private clinicians who have worked with the pupil or his family).

D. Obtain relevant case information from appropriate professional personnel involved in the case.

Comment: Possible sources of case information would be the principal, school psychologist, counselor, visiting teacher, classroom teacher, and the school nurse.

E. Establish the time when the case review and appeal conference will be held. A case review and appeal conference would only be required in cases where the parent can be contacted and wished to have a hearing on the case.

Comment: The parent may wish to bring to the conference a friend, legal counsel, or other persons knowledgeable about the pupil's problem.

F. If a case review and appeal conference is to be held, arrange for the parent and the school personnel involved in the case to be present.

Comment: School personnel involved in the case would include the building principal and probably the psychologist, and could include the consultant(s) of the special education program(s) under consideration.

The following activities will be completed during the due process case review and appeal conference:

1. Review pertinent information from the pupil's school record;
2. Review pertinent information from the psychological assessment (if a psychological assessment was completed);
3. Review other pertinent information regarding the pupil's school performance and behavior;

PARENTAL OPPORTUNITY TO EXAMINE RELEVANT RECORDS

4. Provide the parent an opportunity to review and examine all records upon which the decision made at the building level is based;

5. Provide the parent the opportunity to present information to the person in charge of the review procedures and to the person(s) having major responsibility for assessment and placement procedures at the school building in question (e.g., building principal, school psychologist, special education consultant). This parent information may include test data provided by private practitioners or other relevant expert judgment;

6. Provide an opportunity for all conference participants to thoroughly discuss any aspect of the case that might have bearing on the assessment and/or placement decision. This discussion should include the advantages and disadvantages of assessment and/or placement, and the possible affects of such action on the pupil.

Comment: The decision of the hearing officer should be based solely on the evidence and testimony presented at the hearing.

If a case review and appeal decision is not given at the time of the conference, the parent will be given the decision within 10 school days of the conference. This decision will be given in written form and, whenever possible, in both written and oral form.

In all instances where a case review and appeal is completed, the person responsible for the case review and appeal activities will prepare a written case report. This report will contain the case review decision. A copy of this report will be sent to the parent within 10 school days following the review decision.

Comment: The case review and appeal report should be sent by registered mail, and should contain a summary of the information considered in making the review decision including any statements or materials specifically requested by any of the parties to appear in the record.

DUE PROCESS BINDING ON ALL PARTIES

All placements are the responsibility of the local education agency Superintendent (3319.01 Ohio Revised Code) and the decisions rendered in the impartial due process hearing will be binding on all parties subject to administrative or judicial appeal.

ACKNOWLEDGEMENT

The majority of the Proposed Due Process Safeguards has been derived from the Assessment and Placement Models for Special Education Programs, An ESEA Title III Project, Project Number 45-71-217, Jack Dauterman, Project Director, Richard A. Amorose, Planning-Communication Specialist. Modifications have been made to reflect current practive and the requirements of P.L. 93-380. The complete Assessment and Placement Models for Special Education Programs publication contains additional background, information, guidelines, assessment and placement models, and forms; and will provide a useful reference.

EDB-215-17

DRAFT AS FILED WITH THE SECRETARY OF STATE OF STANDARDS FOR DUE PROCESS AND PROCEDURAL SAFEGUARDS FOR HANDICAPPED CHILDREN AND YOUTH WITH PROPOSED AMENDMENTS

A. General

1. These standards supplement~~,-but-are-not-limited-to,~~ and are included by reference in all Program Standards for Special Education adopted by the State Board of Education, and particularly the parts of those standards dealing with eligibility, assessment and placement.

2. All school districts and other educational agencies that provide or seek to provide special education or related services to handicapped children and youth shall operate such programs and services within these standards.

3. All school districts and other educational agencies shall establish, adopt and make available:

    a. Written policies and procedures concerning identification, evaluation, placement and periodic review processes as they relate to handicapped children,

    b. A written description of available special education programs and related services, and

    c. Written policies and procedures concerning due process and procedural safeguards.

4. Definitions

    a. "School District" means a city, local, exempted village, or joint vocational school district or a county board of education.

    b. "Other educational agency" means a department, division, bureau, office, institution, board, commission, committee, authority, or other state or local agency, an agency administered by the Department of Mental Health and Retardation, other than a school district that provides or seeks to provide special education or related services to handicapped children.

    c. "Handicapped child" means a person under twenty-two years of age and who has one or more handicaps as described in adopted State Board of Education Program Standards for Special Education.

    d. "Special Education Program" means the required related services and instruction specifically designed to meet the unique needs of a handicapped child, including classroom instruction, home instruction, and instruction in hospitals and institutions.

e. "Related Services" means transportation, and such developmental, corrective and other supportive services as may be required to assist a handicapped child to benefit from special education, including the early identification and assessment of handicapped conditions in children, speech pathology and audiology, psychological services, occupational and physical therapy, physical education, recreation, counseling services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only.

f. "Parents" means either parent. If the parents are separated or divorced, parent means the parent with legal custody of the handicapped child. Parents also includes a child's guardian or custodian, surrogate appointed in accordance with these standards, or the child himself once he reaches the age of 18.

g. "Consent" means the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom. The parent has been fully informed of the information in his or her native language, unless it clearly is not feasible to do so. The parent understands that the granting of consent is voluntary on the part of the parent. Blanket consent for all activities is not appropriate.

h. "Days" means calendar days unless specified otherwise.

i. "Personally Identifiable" means data which includes:

(1) The name of the child, the child's parent, or other family member.

(2) The address of the child.

(3) A personal identifier, such as the child's social security number or student number.

(4) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

j. "Destruction" means physical destruction or removal of personal identifiers from data so that the data is no longer personally identifiable.

k. "Notice" or "Notification" means a written and oral statement in the native language of the home unless it is clearly not feasible to do so.

l. "Identification" means those activities designed to locate handicapped children or children with potential handicaps and are ordinarily associated with the referral process prior to evaluation activities.

m. "Evaluation" means those activities involved in gathering data about a specific child, including such methods as testing~~, observation,~~ and interviewing, for the purposes of determining an appropriate educational placement for the child and does not include basic tests or procedures used as part of the instructional program with all children in a particular class, grade or school.

n. "Placement" means those activities involved in arriving at a decision regarding the most appropriate pattern of special education program and/or related services for the child and includes actual implementation of the decision.

o. "Periodic Review" means those activities involved in evaluating the appropriateness of a child's placement after a period of time. In no case shall such period of time exceed one year from the time of placement.

p. "Native Language" means the verbal or non-verbal language normally used by the parents of the child or in the environment from which the child comes~~.~~ UNLESS IT IS CLEARLY NOT FEASIBLE TO DO S

q. "Placement Team" means a group of multi-disciplinary professional staff persons organized for the purpose of reviewing information regarding individual handicapped children and making ~~a~~ recommendationS regarding the most appropriate educational program placement for the child.

r. "Superintendent" means the Administrative head of the school district in which the child resides unless otherwise indicated.

s. "Multi-factored Evaluation" means an evaluation of more than one area of a child's functioning so that no single procedure shall be the sole criterion for determining an appropriate educational program placement and which includes the use of evaluation materials which are not racially or culturally discriminatory.

t. "Individualized Educational Plan" means a written statement for each handicapped child designed to meet the unique needs of the child, which statement shall include:

(1) A statement of the present levels of educational performance of such child;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific educational services to be provided to such child, the extent to which such child will be able to participate in regular educational programs;

(4) The projected date for initiation and anticipated duration of such services;

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved, and whether current placement is appropriate.

u. "Due Process" means the steps and measures to which a person is entitled in order to protect himself and his rights.

5. Parents' Rights

a. Right to deny permission for any proposed evaluation activities.

b. Right to review and inspect all records upon which educational decisions are made, to obtain a copy of such records at actual cost of copying, and to request amendments be made to the data.

c. Right to obtain an independent evaluation of the child at their own expense and introduce such information into the child's record.

d. Right to present objections regarding ~~identification,~~ evaluation and/or placement activities or the provision of a free and appropriate education to the child through an impartial due process hearing including a description of all of the rights regarding the procedures of such a hearing including the right to question witnesses, to present evidence, to be assisted or represented by individuals of his or her choice including an attorney, to compel the attendance of witnesses, to receive written findings of fact and decisions, to appeal such decisions and to receive a written or electronic verbatim record of the proceedings of the hearing.

e. Right to be fully informed, in written and oral form of all proposed ~~identification,~~ evaluation, placement and periodic review, activities and decisions in the native language of the home.

f. Right to obtain a description of the kinds and number of facilities, program options, services and personnel provided handicapped children by the school district or other educational agency.

g. Right to have a conference (or communicate in other ways) with any person participating in educational decisions during the ~~identification,~~ evaluation, placement and/or periodic review process.

6. Child's Rights

a. Right to a free and appropriate public education

b. All of the rights of the parent shall pass to the child upon reaching the age of majority except in cases where the child is legally determined under State statute to be incompetent

B. Prior Notice-Evaluation, Placement and Review

1. General

Procedural safeguards require that parents receive prior notice of their confidentiality and access rights to personally identifiable or other pertinent data concerning the ~~identification,~~ evaluation and placement of the child.

a. Written parental consent shall be obtained before personally identifiable data are:

(1) disclosed to anyone other than authorized officials except as provided in state or federal law;

(2) used for any purpose other than making educational decisions regarding identification of the child.

b. Access rights for parents to examine all relevant records with respect to ~~identifcation,~~ evaluation and placement activities should indicate that:

(1) parents are permitted to inspect and review any personally identifiable data which is collected, maintained or used by the agency in making educational decisions regarding their children. The agency shall comply with such a request relating to the identification of the child and in no case more than 45 days after the request has been made;

(2) parents shall have the right to a response from the agency to reasonable requests for explanations and interpretations of the data;

(3) the agency shall keep a record of parties obtaining access to personally identifiable data collected, maintained or used for educational decisions regarding handicapped children (except access by ~~parents and~~ authorized employees of the agency) including:

(a) the name of the party;

(b) date access was given;

(c) purpose for which the party is authorized to use the data.

(4) when records contain information on more than one child, parents shall be permitted to inspect and review or be informed of only the specific data regarding their child;

(5) the agency shall provide parents upon request a listing of the types and locations of data collected, maintained or used by the agency~~;~~ RELATIVE TO THE PLACEMENT OF HANDICAPPED STUDENTS;

(6) parents shall be permitted to request that the agency provide copies of the records containing data regarding their child where failure to provide such records would effectively prevent the parent from exercising the right to inspect and review the data. A fee may be charged for copies of such records, provided that the fee does not effectively prevent the parent from exercising the right to inspect and review those records. No fee may be charged to search for or to retrieve data.

2. ~~Identification-&~~ Evaluation

Prior to the initiation of any ~~identification or~~ evaluation activities, parents shall be notified of the intent to identify and formally evaluate any child suspected of needing a special education program or related services. Such notice shall include, but not be limited to:

a. a request for written permission to evaluate the child. Written parental permission must be obtained before any evaluation activities are initiated;

b. a statement of the right to refuse permission for the evaluation with the understanding that the ~~local~~ school district can then request an impartial due process hearing;

c. reasons the evaluation has been requested and the name of the person(s) who initiated the process;

d. an accurate and concise description of any suspected problem;

e. the names of persons responsible for providing evaluation information;

f. a description of the potential advantages and limitations of the proposed evaluation;

g. a description of possible special education program options.

h. general description of procedures and instruments that will be used;

i. access to a summary of multi-factored ~~assessment~~ EVALUATION data;

j. a description of how the findings of the evaluation are to be used, by whom, and under what circumstances;

k. a statement of the right of the parent to obtain an independent educational evaluation at their own expense;

l. a declaration that the child's educational status will not be changed without the parent's knowledge or upon the decision rendered in an impartial due process hearing;

m. identification of the school district staff person to whom the parent response should be sent;

3. Placement

~~Within-15-days-after-completion-of-the-evaluation-and-development-of the-written-individualized-educational-plan,-the-appropriate-school district-staff-person-shall-inform-the-parent-in-writing,-or-by-the most-appropriate-means,~~ WITHIN 15 DAYS AFTER THE RECEIPT OF THE PLACEMENT TEAM CONFERENCE REPORT THE SUPERINTENDENT SHALL NOTIFY THE PARENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, that a change in the educational status of the child is proposed or that a requested change in placement is denied. Such ~~written~~ notice shall:

a. describe the proposed educational plan, the method by which it was developed, the reasons why the proposed placement is deemed the least restrictive alternative program for the child;

b. state that pertinent school reports, files and records of the child shall be available for inspection and copying at the actual cost upon written request by the parent or his designee;

c. contain a declaration that no change in the child's educational placement will be made pending resolution of the parent's objections unless the present placement endangers the child's health or safety;

4. Periodic Review

No later than 12 calendar months after a child's initial educational status has been changed and during each calendar year thereafter, so long as the child continues to receive special education services, the school district shall conduct a review of the child's INDIVIDUAL EDUCATIONAL program to evaluate its effectiveness in meeting the educational needs of the child. At least ~~5~~- 15 days prior to each review the parent shall be notified in writing in accordance with adopted policy, that the review is scheduled. Such notice shall indicate:

a. statement of purpose;

b. the elapsed time since original placement;

c. the date, time and place for the review;

d. review procedure;

e. an invitation for parental participation;

f. a statement that the parents will receive within ~~10~~-15 days the findings and recommendations of the review.

The annual review shall determine whether the child will:

a. remain in his present program using the instructional pattern set for the child originally;

b. remain in his program but with a restructured instructional pattern;

c. be provided with a different special education program to meet educational and/or social needs;

d. be totally integrated into the regular classroom;

e. be offered services elsewhere in or out of the community.

C. Parent Surrogates

1. General

Parent Surrogates: Due process and procedural safeguard policies and procedures shall include procedures to protect the rights of the child when the parents of the child are unknown or unavailable, or when the child is a ward of the state or when the child is without a formally declared legal representative. These policies and procedures shall include provisions to assure that:

a. When written permission is not forthcoming from the child's parent or legal guardian to begin any of the evaluation processes, a written inquiry shall be sent to the adult in charge of the child's place of residence, as well as to the parents or legal guardian at their last known address. If these efforts find that the child is without a parent or guardian, or if it is otherwise known that they are unavailable, then a request for a parent surrogate will be filed with the superintendent of the school district.

b. Upon receipt of a request for a parent surrogate, the superintendent or his designated representative shall, within 30 days, utilize all available information to determine if the child is in need of a surrogate and shall assign one if such study so indicates.

c. The parent surrogate will be responsible for ~~representing-the~~ PROTECTING THE RIGHTS OF THE child~~,-just-as-the-parents-or-legal guardian-would,~~ through the complete decision making process including the appeals process, if that occurs, and the first review of the placement.

d. The parent surrogate shall not be an employee of the school district, state or local educational agency involved in the education or care of the child.

e. The school district or other educational agency, shall individually or in cooperation with other districts provide aN INFORMATION ~~training~~ PROGRAM FOR PARENT SURROGATES REGARDING ~~includes-at-least-the-following:~~ THEIR ROLE AND RESPONSIBILITIES.

~~(1)--Role-and-responsibilities-of-the-surrogate.~~

~~(2)--Specific-nature-and-needs-of-different-types-of handicapped-conditions.~~

~~(3)--State-and-local-policies-regarding-the-education of-exceptional-children.~~

~~(4)--Existing-educational-programs.~~

~~(5)--Educational-placement-options-to-consider.~~

~~(6)--Procedures-governing-the-operation-of-special-education programs.~~

~~-f.--The-parent-surrogate-shall-have-completed-a-training-program-as described-above.~~

f.~~g~~. A child who has reached the age of majority may request a PARENT surrogate~~.~~ WHEN NO PARENT IS AVAILABLE.

~~h---Parent-surrogate-policies-and-procedures-shall-be-printed and-made-available-to-all-interested-parties.~~

g. ~~i.~~ To the extent possible, parent surrogates should match the child's cultural and linguistic background.

~~j. The school district, or other educational agency responsible for the education of the child shall recruit persons who can serve as surrogates, maintain a registry of eligible persons and may compensate or make arrangements for the compensation of such persons when utilized.~~

D. Conference, Review and Appeal

1. General

Procedural safeguards require that the processes described in this section be utilized in the ~~identification,~~ evaluation, placement, and periodic review phases of educational planning.

2. Case Conference: Case conference procedures are informal procedures ordinarily used in the ~~identification,~~ evaluation, placement, and periodic review process to provide parents and the school district an opportunity to review and interpret information regarding the child and his individualized educational program and to resolve problems encountered during this process.

a. A case conference may be requested by the parents or school district at any time.

b. Case conference procedures may be used as a technique to review recommendations of the placement team, to discuss the child's individualized educational plan, and to re-evaluate appropriateness of the placement.

3. Placement Team Conference: A conference of the multi-disciplinary staff placement team shall be held to make recommendations regarding any change in the educational placement of the child. A placement team conference shall contain the following provisions:

a. Participants. In addition to the placement team members, and at the discretion of the Chairperson, participants in the conference may include an appropriate representative of the child's home school, school personnel involved in the evaluation of the child, those persons who may become responsible for providing a special education program or service to the child, THE PARENTS, and any others who have a current, demonstrated educational interest in the proceedings.

~~b.--The-parents-shall-be-given-an-opportunity-to-attend-all-or part-of-the-conference-at-the-discretion-of-the-chairperson.~~

b. ~~c.~~ The purposes of the conference shall be to:

(1) Establish a composite understanding of the child's learning characteristics, sensory and motor skills and behaviors.

(2) Determine eligibility for special education programs or RELATED services.

(3) Determine the child's unique educational needs and the extent to which these needs can be met by the standard program.

(4) Determine the nature and degree of special education intervention needed and recommend appropriate placement including an estimate of the length of time such placement is expected to be appropriate.

(5) Develop or make recommendations regarding the development of an individualized educational plan indicating specific objectives to be attained by the child.

(6) Establish data requirements for the re-evaluation procedure which shall take place within a year's time.

c. ~~d.~~ A written report of the results and recommendations of the placement conference shall be prepared.

(1) The conference report shall be dated, list names of all those in attendance, and be signed by the person who prepared it.

(2) A copy of the conference report shall be kept on file by the school district providing the educational program. ~~A-copy-shall-also-be-sent-to-the-parent.~~

(3) A copy of the conference report and all other pertinent information shall be sent to the superintendent prior to his decision regarding the child's placement.

~~(4) Public school personnel not in agreement with the findings and recommendations of the conference may prepare and attach to the conference report, their minority opinion(s).~~

(4) ~~(5)~~ Confidentiality standards shall be followed in regard to this data.

d. ~~e.~~ The multi-factored evaluation and team placement conference shall be completed within ~~180~~ 90 days of the date of referral or the date of application for admittance to the public school by the parents of the child.

e. ~~f.~~ The superintendent shall make a placement decision within ~~10~~ 15 days of receipt of the placement team conference report and shall notify the parents of the decision by certified mail, RETURN RECEIPT REQUESTED, in accordance with Standards relating to prior notice.

4. Administrative Review: The child, his parents, or educational agency other than the school district may request an opportunity to present complaints to the superintendent regarding the ~~identification,~~ evaluation or educational placement of the child or the provision of special education.

    a. Upon receipt of a complaint, the superintendent, without undue delay and at a time and place ~~mutually~~ convenient to all parties, ~~may conduct an informal hearing or review of the case.~~ SHALL CONDUCT A REVIEW, AND MAY HOLD A HEARING, AND SHALL NOTIFY ALL PARTIES IN WRITING OF HIS DECISION WITHIN 20 DAYS.

    b. Every effort should be made in the review to resolve any disagreements and to avoid a formal hearing without subjugating the best interests of the child.

    c. ~~Both~~ ALL parties have the right to invite others to participate in the ~~review~~ INFORMAL HEARING, including legal counsel.

    d. Any party aggrieved by the decision of the superintendent may present a formal complaint in writing WITHIN 20 DAYS to the BOARD OF EDUCATION AND THE superintendent requesting an impartial due process hearing.

5. Impartial Due Process Hearing: An impartial due process hearing may be requested anytime there are differences on any matter relating to the ~~identification,~~ evaluation or educational placement of the child, or the provision of a free and appropriate public education to such child and which cannot be resolved through the conference and review procedures outlined above.

A Program of Education for Exceptional Children in Oklahoma

Bulletin S.E. No. 10
Prepared by the
Special Education
and the
Oklahoma Curriculum
Improvement Commission

1907

OKLAHOMA STATE DEPARTMENT OF EDUCATION
Leslie Fisher, Superintendent
976

(3) Applications for Aid will be checked and checks will be mailed to the school districts for the amounts to be reimbursed.

Reimbursement will be made by semesters using half of the appropriated funds for each semester.

For the homebound teacher reimbursement will be at the rate of $3.00 per teaching trip.

If applications for aid exceed available funds, each claim will be prorated.

Please Note: ALL SECOND SEMESTER APPLICATIONS FOR AID MUST BE IN THE SPECIAL EDUCATION OFFICE BY JUNE 10. APPLICATIONS RECEIVED AFTER THIS DATE WILL NOT BE CONSIDERED.

BOARD REGULATION OF PROCEDURAL SAFEGUARDS

APPROVED FEB. 27, 1975

Following are the procedures adopted by this SEA for insuring that handicapped children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children:

A. **Due Process Guarantees.** The following due process procedures have been adopted by this SEA to comply with Section 613 (a) (13) (A) (i) - (iv) of EHA-B, as amended by P.L. 93-380. The new regulations contained in these amendments become effective for implementation by Oklahoma LEA's sixty (60) days after approval by USOE-BEH.

1. **Definitions**

   a. **Parent.** The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures set out herein. The term parent also includes the child if he has reached the age of majority.

   b. **Notification.** Terms such as "notice" and "notification" include (1) written statements in English and in the primary language of the parent's home, and (2) oral communication in the primary language of the home.

   c. **Impartial Hearing Officer.** The term "impartial hearing officer" means a person or tribunal of persons assigned to preside at a due process hearing and whose duty it is to assure that proper procedures are followed and that the rights of the parties are potected. An impartial hearing officer must be:

      1) unbiased — not prejudiced for or against any party involved in the hearing;

      2) disinterested — not having any personal interest at stake in the outcome; and

      3) independent — may not be an officer, employee or agent of the LEA. (Such person(s) should be employed by the SEA, either at the regional level or in the central office.)

   d. **"Days"** — means calendar days.

e. **"Surrogate Parent"** — means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA of LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

2. **Parental Permission for Testing.** When there is reason to believe that a pre-school or school age child is in need of special education services, and such a child becomes the subject of individual evaluation procedures (formal testing, informal assessment, observation), then advanced written permission for such procedures to be used shall be obtained from the parents. The letter requesting permission for such testing shall contain the following:

— The reasons the evaluation has been requested, and the name of the person who initiated the process,

— A statement of the right to refuse to permit the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evaluation,

— A statement of the right to review all relevant records and to be fully informed of the results of the evaluation, and

— A declaration that the child's educational status will not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted. (Addendum 6)

a. **Parents Refusal.** If the parents refuse to give permission, the LEA should attempt to seek resolution through an individual conference (s). If the parents still refuse to allow the proposed evaluation, the LEA should either accept the decision or appeal to the (State) hearing officer. On appeal, a full adversarial hearing, meeting the requirements set out below, will be held. In such a hearing, the burden of proof is on the LEA to demonstrate that the continued placement of the child is so dangerous to her/his health or safety or so disruptive to the program for the other children that the initiation of the evaluation procedure is justified as the first step to a special program placement.

b. **Parents Failure to Respond.** If a parent fails to respond to all to the LEA's repeated attempts by means in addition to regular mail (e.g., telephone, home visit) to obtain consent for evaluation, within twenty (20) days, then the LEA can proceed with the evaluation of special needs. The hearing officer should provide notice to the parent regarding his/her full due process rights in this proceeding. In order for the LEA to prevail, it must:

1) demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed; and

2) establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

3. **Prior Notice.** Whenever a change is proposed in a child's educational program (including proposed changes resulting from periodic reviews), or when a parent's

request for a different placement for the child is denied, the LEA must notify the parent in advance of the proposed action. Such notice should be presented orally and in writing, via certified mail. The written notice should:

a. Describe in detail the proposed or requested action and the reasons why such action is deemed appropriate or inappropriate for the child.

b. Specify any tests or reports upon which the proposed or requested action is based.

c. State that school files, records, and reports pertaining to the child will be available for inspection and copying at reasonable cost.

d. Describe in detail the right to obtain a due process hearing if there are objections to the proposed or requested action, including a description of all the rights regarding procedures at such a hearing.

e. List those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel themselves.

f. Indicate the opportunity to obtain an independent evaluation of the child at public expense and including the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost.

g. When the proposed or requested action involves placement or denial of placement, describe any alternative educational placements which are similar to regular class settings than is the proposed placement, and give the reasons why such alternative placements are not appropriate for the child.

h. Describe the procedures for appealing the decision resulting from the due process hearing.

i. State that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. (In an emergency situation where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the hearing examiner.)

4. **Impartial Due Process Hearing.** Following written notice and upon request for a hearing, the procedures set forth below should be followed. If the request for a hearing is made more than ten (10) days before a scheduled meeting of the local board of education, it shall be heard at the scheduled meeting. If the request for a hearing is made less than ten (10) days before a scheduled meeting of the local board of education, it shall be heard at the next scheduled meeting of the local board of education. The district superintendent shall notify the parent or guardian of the child in writing of the date, time, and place of the hearing at least five (5) days before the hearing.

a. **Prerequisites to a hearing.** Before the actual hearing is conducted, the following steps will take place:

1. Prior notice as described in Section A-3, preceeding, will be provided to the parents.

2. The parents will be allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.

3. The parents will be provided the opportunity to obtain an independent evaluation of the child's educational needs at public expense.

4. An impartial, trained hearing officer will be appointed to preside at the hearing.

5. The hearing officer will provide to the parents and to the officials of the LEA notification as to the time and place of the hearing, which should be a time and place reasonably convenient for the parents.

6. The parents will be given the opportunty to exercise their right to compel the attendance at the hearing of any officer, employee or agent of the Local Education Agency or State Education Agency who may have testimony or evidence relevant to the question of the needs, abilities, proposed or status of the child; and

7. Steps will be taken to assure that the child will remain in his/her present educational placement until the hearing officer enters a decision following the hearing (except that in emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by written order of the hearing officer).

b. **Procedures at the hearing.** The due process hearing will be conducted in accordance with the following procedures:

1. The hearing officer will preside at the hearing and will conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony;

2. The parents and the LEA may have representatives, including but not limited to legal counsel or other professional persons, attend the hearing;

3. The hearing will be closed to the public unless the parents request an open hearing;

4. The parents and the LEA, or their respective representatives, have the right to present evidence and testimony;

5. The parents and the LEA and their respective representatives will have an opportunity to confront and question all witnesses at the hearing;

6. If the child is over the age of majority, he or she will have the right to attend the hearing;

7. If the child has not reached the age of majority, the parents have

the right to determine whether he/she should attend the hearing, except that upon a finding by the hearing officer that attendance by the child would be harmful to his/her welfare, the child may be excluded from portions of the hearing.

8. The burden of proof as to the appropriateness of any proposed placement, as to why more normalized placements could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the local educational agency;

9. A tape recording or other verbatim record of the hearing should be made.

10. At all stages of the due process procedures, interpreters for the deaf and when needed interpreters fluent in the primary language of the home should be provided at the public expense.

c. **Decision of the hearing officer.** The hearing officer's decision shall be issued within twenty (20) days in accord with the following requirements:

1. Such decision will be in writing and will be sent by certified mail to the parents, to the LEA, and to their respective representatives;
2. The decision of the hearing officer shall include findings of fact conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed education program, it shall include a statement as to what is an adequate and appropriate educational program for the child. If the decision is to approve a proposed educational program, it shall include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs;
3. The decision of the hearing officer will be based solely on evidence and testimony presented at the hearing;
4. A summary of the proceedings at the hearing shall be made, into which should be included any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties to the hearing;
5. Upon request of the parents or the LEA, a copy of the tape recording or other verbatim record of the hearing will be transcribed and provided;
6. A statement will be included that the decision of the hearing officer is binding upon the parents or the child if over the age of majority, and upon the local education agency, its officers, employees and agents, subject to procedures for administrative or judicial appeal.
7. The decision of the hearing officer will include a statement of the procedures, to be used for appealing such decision.

d. **Appeals.** Appeals may be initiated by a parent or by the LEA. Such appeal of a decision of the hearing officer will be heard by the State Board of Education or its impartial designee. Any such designee should meet the same qualifications required of all hearing officers. The appeal shall be conducted in accordance with the state administrative procedure act or other statutes governing appeals of administrative proceedings, and an opportunity shall be provided to the parents to appeal the decision of the State Board of Education or its impartial designee to a state court.

NOTE: Generally, if parents reject the decision of the hearing officer at the initial hearing, such rejection will automatically constitute an appeal (1) to the State Board of Education or its designee, and, subsequently (2) to the courts. Thus, it is not necessary for the parents to separately request such an appeal(s).

5. **Surrogate Parents.** In order to provide every child eligible for a public education with the protection of procedural due process, even under circumstances where a child's parents or guardians are not known, are unavailable, or the child is a ward of the state, each child will be assigned a parent surrogate according to the following procedures:

a. **Recruitment and Training.** The SEA will recruit and train persons who can serve as surrogate parents, and maintain a registry of eligible persons, and compensate or make arrangements for the compensation of such persons when served.

b. **Selection by Standing Board.** The SEA, when the need is demonstrated, will elect a group of people to be available to serve as surrogate parents. These people shall be chosen from a list of people recommended by a state level, standing board or committee charged with advising or working with the State regarding the education of handicapped children. This board or committee shall be broadly representative of persons concerned with the education of handicapped children, including consumers, parents, teachers and others concerned with the education of handicapped children.

c. **Qualification of Surrogates.** Persons selected as surrogates will (1) have no other vested interest that would conflict with their primary allegiance to the child they would represent, (2) be committed to personally and thoroughly acquaint themselves with the child and the child's educational needs, (3) be of the same racial, cultural, and linguistic background of the children they represent and (4) be familiar with the education system within the State.

d. **Accessibility to Children.** Persons to serve as surrogates will be selected to assure adequate representation of the entire state so that they will be readily accessible to the children that they represent.

e. **Procedures for Assigning Surrogates.** Assignment of a surrogate to a particular child will be made according to the following procedures:

(1) Any employee of an LEA, SEA, residential school or hospital, any physician, any judicial officer, or any other person whose work involves education or treatment of children who knows of a child possibly needing special education services and knows that the parents or guardians are not known, unavailable or that the child is a ward of the State, will file a request for assignment of a surrogate to the child with the child's LEA with a copy of the request to the standing committee or board and to the SEA.

(2) In an effort to determine whether or not the parents or guardians are in fact unknown, unavailable, or the child is a ward of the State, the LEA will send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.

(3) The LEA should request from the SEA the assignment of a hearing officer to weigh the evidence and determine whether or not the parents or guardians are unknown, unavailable, or the child is a ward of the State. This determination shall be completed within a reasonable time following receipt of the original request for a surrogate; and the finding of the hearing officer shall be sent to the LEA, SEA and the standing state board or committee. If the hearing officer finds a need for a surrogate, such assignment will be made by the SEA within 5 days.

(4) Once assigned, the surrogate will represent the child at least through the time of the first periodic review of the child's educational placement.

(5) The child himself will have the right to obtain a change in surrogate at any time he chooses.

(6) Surrogates will not be assigned to children who have reached the age of majority.

B. **Least Restrictive Alternative.** Following are the procedures to insure that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily:

1. **Statement of Policy**

A. **Statement of Philosophy.** The Oklahoma State Department of Education has always operated on the policy that Special Education was a "part of, not apart from regular education." The Department recognizes, however, that there must be a continuum of service delivery systems available if the special needs of the exceptional child are adequately met. The service delivery systems include:

Institutional Placement
Self-Contained Day Classes
Learning Resource Rooms
Itinerant Teachers
Homebound Teachers
School to Home Telephone
Teacher Consultants to Regular Classroom Teachers
Diagnostic and Prescriptive Teaching Resource Centers

Local school systems are encouraged to develop their programs around the needs — not force students into rigid program molds. While emphasizing the philosophy of "Least Restrictive Alternative" the realism of the special needs of handicapped children is considered in deciding their educational program. Emphasis is given to placement in a program designed to assure maximum development with minimal failure.

State Board Regulations

In 1974, the State Legislature passed a law, "The Prescriptive Teaching Act of 1974" This law provides provisions insuring procedural safeguards such as requiring parental consent for testing, the use of multi-disciplinary tests, development of individual educational intervention plans and in general insures proper identification and placement by qualified personnel for those students needing special services. The provisions of this law have been disseminated to LEA's. The regulations on due process procedures will be sent to all LEA's as well as all other additions to the state policies as changes are made.

2. Implementation and Enforcement Plan

A. The Oklahoma Law allows the LEA's a choice of program alternatives covering the fall continuum of delivery systems. Each LEA must submit to the SEA on an annual basis a program report and a class enrollment record. The SEA's regulations allow freedom for each child to be programmed to meet individual needs.

B. If any deficiencies in a program are observed, the SEA representative consults with the LEA and helps develop a plan to remediate program deficiencies.

C. A major function of the Special Education Section is the provision of inservice training and technical assistance to LEA's. Each year, five regional workshops in co-sponsorship with the Oklahoma Association for Crippled Children are held. Workshop topics center around current issues. In addition, the SEA staff is available on request to any LEA to hold conferences or workshops or provide technical assistance as needed.

The state staff works closely with the various professional and parent organizations serving as panelists or presentors at various state or regional meetings. The staffs of the Regional Education Service Centers hold inservice training sessions for both regular and special education teachers periodically throughout the year.

Our two representatives from the Regional ALRC and RRC schedule periodic workshops on media and evaluation. They also, on request, provide technical assistance to individuals or groups.

D. The Oklahoma State Law provides for cooperative programming as needed. Programs may be inter-district or regional in nature. Guidance is given so that as needs increase local programs are developed allowing less restrictive individual programming.

3. Cooperation between Regular and Special Education

The Special Education Section is part of the Instruction Division of the SEA. Special Education staff participate jointly with subject matter specialists in workshops throughout the state. A legislative mandate for a statewide accountability program covering all grades and subject matter has initiated much interaction between regular and special education as needs, objectives and accountability regulations are implemented.

A recent law requires all teachers to obtain at least one course in the education of the Exceptional Child.

4. **Special Education Advisory Committee**

The state accountability resolution requires active participation of advisory groups in developing LEA needs, goals and objectives.

5. **Inservice Training**

Inservice sessions are held as part of the SEA's commitment to quality education for all children. The Special Education staff has served and will continue to serve on panels and present programs to local staffs and at regional OEA meetings as well as participate in meetings of Title I project staff.

PROCEDURAL SAFEGUARDS

C. 1. **Non-discriminatory Testing & Placement**

Following are the procedures that have been adopted by this SEA to insure that testing and evaluation materials and procedures utilized for purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory:

a. Written parental permission will be obtained before any individual evaluation procedures are carried out on a child where agency proposes to change placement of child.

b. Parents shall have the power to request the LEA to conduct an evaluation on their child when they feel he/she has need of a special education program.

c. The request for parental approval for individual evaluations will contain the following information: (1) the tests that are used in evaluations, (2) how long the evaluation of a child usually takes, and (3) the purpose of evaluation, etc.

d. The various evaluation materials and procedures used for purposes of classification and placement of handicapped children will meet a test of reasonableness in the eyes of competent professional persons and informed laymen; and such material and procedures will be administered by qualified persons under conditions which are conducive to the best performance of the child.

e. Upon request, parents will be given a report of the results of the evaluation by a qualified person to interpret evaluations results.

f. Prior notice must be given to parents whenever decisions are to be made which will affect the educational status of their child — including decisions based on both the initial evaluation and all subsequent reviews; and permission must be obtained from the parents before such decisions are implemented.

g. **The** intent or effect of the evaluation should be the development of an **educational** plan for the child, based on a description of his/her strengths **and** weaknesses. Whenever possible, parents should **participate** in the development of the educational plan for the child.

2. **Comprehensive Assessment**

The assessment of a handicapped child in an LEA will be multifactored and multisourced. In order to provide a comprehensive view **of the** child from the perspective of the school, home and community, **the following** information must be obtained and considered in the placement decision:

a. **School Information.** Information from the school will include but not be limited to an assessment of the following areas:

(1) **Educational Functioning:** An assessment will be made of the child's educational functioning in relation to the academic program of the school; and the results of this assessment shall be expressed in terms of both the child's strengths and weaknesses. The assessment should be comprehensive, using a full range of available instrumentation and observations, including diagnostic tests and other appropriate formal and informal measurements. Whenever intelligence tests are administered, the I.Q. score, per se, shall not be used in making inferences about the child's level of intelligence or learning potential. The full test (including protocols, content, subtests, etc.), will be interpreted by the qualified examiner who administered the test.

Any "classification" of students for educational purposes shall consist of a description of the types of educational programs and services needed by each child to learn to the fullest extent possible in the school setting.

(2) **Psychomotor and Sensory Development:** An assessment also will be made of the child's psychomotor and sensory development, including audiological and ophthalomological or optometric examinations if deemed necessary.

(3) **Adaptive Behavior:** An assessment also will be made of the child's adaptive behavior in the school setting based on observations and records, and, where appropriate, the use of adaptive behavior scales.

b. **Home Information.** Information from the home will include (1) the child's adaptive behavior in the home, community and neighborhood, as perceived by his parents or guardians or principal caretakers, (2) the sociocultural background of the family, and (3), the child's health and developmental history.

3. **Modification of Procedures for Children with Linguistic or Cultural Differences**

No assessment will be attempted when a child is unable to respond to the tasks of behavior required by a test because of linguistic or cultural differences unless culturally and linguistically appropriate measures are administered by qualified persons. In those cases in which appropriate measures and/or qualified persons are not available, diagnostic-prescriptive educational programs will be used until the child has acquired sufficient familiarity with the language and culture of the school for more formal assessment.

Persons interpreting assessment information and making educational decisions will be qualified to administer the various measures and qualified to take cultural differences into account in interpreting the meaning of sets of data from both the home and the school.

4. **Evaluation-Placement Team**

The development of the educational program for a child will be the responsibility of an evaluation team within the LEA. The SEA should provide assistance to LEA's in the development of the evaluation-placement team concept.

a. **Composition.** The team will be composed of persons who directly or indirectly are involved in or influence the child's educational success. This might include the parents and their community representative or advocate, various professional persons in the school, including the regular teacher, special teacher, psychologist, communication/speech therapist, counselor, and nurse. In addition community related personnel including the social worker, minister, and family physician, might also be appropriate.

b. **Review of Instrument & Procedures.** The team will accept responsibility to review the procedures, instruments and observations used to determine the child's level(s) of functioning and behavior and will evaluate the appropriateness of such procedures, instruments and observations with regard to each child's particular socioeconomic level and economic background.

c. **Recommendations for Placement.** The team will be responsible for evaluating all pertinent information about the child and making recommendations concerning the most advantageous placement possible. Some alternative program assignments recommended by such a team might include:

— those immediately available in the LEA (based on the continuum concept),

— programs developed by the LEA to meet the unique needs of the individual child.

— contracts with other LEA's.

5. **Re-evaluation or Continuous Review Process**

There will be a continuous review of a child's placement or progress. An annual review of his/her educational status will be made to determine whether the child should:

a. Remain in his present program using the instructional pattern set for the child originally;

b. Remain in his present program but with a restructured instructional pattern;

c. Be placed with a different special service unit to meet educational and/or social needs;

d. Be totally integrated into the regular classroom; or

e. Be offered services elsewhere in or out of the community.

6. **Training of Personnel**

Inservice education of school personnel charged with responsibility of child assessment and the determination of eligibility for special education services will be ongoing. Such training services and components will include the following:

a. Interpretation of instruments and test results designed to obtain information based on a range of specific behaviors, not solely upon statistical normative data.

b. Development of competencies in interpreting assessment appropriately for various cultural and minority groups.

c. Development of competencies in using and interpreting adaptive behavior measures and in making estimates of adaptive behavior.

Improvements in pre-service training in the use of multi-factored and multi-sourced assessment procedures, will be encouraged through recommendations to colleges and universities on course content at the periodic re-evaluations for certification as training institutions.

POLICY CONCERNING EDUCATIONAL EVALUATION

Philosophy:

The Oklahoma State Department of Education has always maintained that Special Education is a part of, not apart from, regular education. To assign a child to a program which differs from that provided his peers, must be done on the basis of its relevancy to the provision of an adequate education for that individual and his specific needs and abilities. Assignment to a regular program can be as restrictive to a child's freedom to learn as would inappropriate assignment to some special program. Proper evaluation of the individual's ability to function is vital to the provision of adequate educational placement.

The Department recognizes that test scores are a reflection of the interaction of the individual's ability with his environment. They reflect the individual's functioning at that time, in that specific situation and must be used cautiously and in conjunction with other evidence, i.e., environment, social and economic status, prior behavior in classrooms, on classroom work and any other evidence available to support recommendations for specific educational programming. To the extent, possible categorization should be for educational purposes and should not be permanent until sufficient evidence is accumulated to justify specific diagnosis.

OREGON

Title	Minimum Due Process Procedure and Hearing OAR 22-165
1. Purpose and Scope	This rule establishes procedures for executing a Minimum Due Process Procedure and Hearing.
2. Authority	This rule is promulgated under the authority of ORS 343.055.
3. Effective Date	This rule is effective March 21, 1975

DUE PROCESS HEARING AND PROCEDURE

Definitions

a. Parent: the term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian or a surrogate parent for a child appointed pursuant to procedures set out herein. The term "parent" also includes the child if he has reached the age of majority.

b. Notification: terms such as "notice", "notify", and "notification" include (1) written statements in English and in the primary language of the parent's home, and (2) oral communication in the primary language of the home.

c. "Days": means calendar days.

d. "Surrogate Parent": means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known; are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

Prior Notice:

Whenever a change is proposed in a child's educational program or when a parent requests a different placement for a child, the administrative officer of the school district shall give the matter a complete review and notify the parent in advance of proposed action.

If the parents or guardians are not known, unavailable, or the child is a ward of the State, the LEA shall assign an individual (not to be an employee of the State or local educational agency involved in the education or care of children) to act as a surrogate for the parents or guardians. In selecting surrogates, the LEA should make a presumption in favor of relatives of the child. Further, persons selected as surrogates should:

a. Have no other vested interest that would conflict with their primary allegiance to the child they represent.

b. Be committed to personally and thoroughly acquaint themselves with the child and the child's educational needs.

c. Be of the same racial, cultural and linguistic background of the children they represent.

d. Be familiar with the educational system within the State.

The written notice regarding a proposed change in a child's education program should:

a. Describe in detail the proposed or requested action and the reasons why such action is deemed appropriate or inappropriate for the child.

b. Specifiy any tests or reports upon which the proposed or requested action is based.

c. State that school files, records and reports pertaining to the child will be available for inspection and copying at reasonable cost.

d. Describe in detail the right to obtain a due process hearing if there are objections to the porposed or requested action, including a description of all the rights regarding procedures at such a hearing.

e. State that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. In an emergency situation where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the hearing examiner).

Procedures for the Hearing.

1. Following a written notice and request by a parent for a hearing, delivered to the administrative officer of the school district within ten calendar days from the receipt of notice of placement, transfer, or denied placement, the local school board shall appoint an impartial hearing officer to preside at a hearing. The hearing officer shall provide to the parents and to the officials of the LEA notification as to the time and place of the hearing, which should be at a time and place reasonably convenient to the parties involved. If no request for a hearing is made within ten calendar days, the administrative officer of the school district shall make the placement, transfer, or deny placement in a special education program.

2. The hearing shall be scheduled not sooner than fifteen calendar days nor

later than forty-five calendar days after receipt of the request for hearing from the parent. These time limits may be waived or altered by mutual consent.

3. The hearing shall be a closed hearing unless the parent requests an open hearing.

4. The parent shall have the right to a representative of his own choosing, including legal counsel. The school district may also be represented by legal counsel.

5. The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

6. The administrative officers of the school district shall bear the burden of proof as to all facts and as to the appropriateness of any placement, denial of placement, or transfer.

7. A tape recording or other record of the hearing shall be made. The record of the proceedings shall be available to the parent.

8. At a reasonable time prior to the hearing, the parents or their counsel shall be given access to all school district and other public office records pertaining to the child, including any tests or reports upon which the proposed action may be based.

9. At a reasonable time prior to the hearing, the parents or their counsel shall have an opportunity to obtain an independent educational evaluation of the child.

10. The parents or their representative shall have the right to request the attendance of any official, employee or ageny of the public school district who may possess evidence upon which the proposed action could be based.

11. Full opportunity for examination and cross-examination shall be accorded to each party.

12. Within thirty days after the hearing, the hearing officer shall render a decision in writing. Such decision shall include findings of fact and conclusions of law and shall be filed with the school district and a copy be certified mail to the parent.

13. Decisions rendered in the impartial due process hearing required by Section 613 (a) (13) of the Act shall be binding on all parties subject only to appropriate administrative or judicial appeal.

14. Pending a determination by the hearing officer, the school district shall take no action to place, to deny placement, or to transfer the child.

15. Nothing contained herein shall be construed to preclude any system of consultations or conference with parents that is used by school districts

with regard to the educational assignment of children thought to be handicapped. Nor shall such consultations or conferences be held in lieu of the due process hearing if one is requested.

ADMINISTRATIVE RULE 22-175

Title 22-175	Rule Establishing Criteria for Approving School District Special Education Programs.
1. Purpose and Scope	This rule establishes criteria for the development and/or modification of school district special education programs and subsequent use of the Department of Education in approving such programs for state reimbursemen
2. Public Participation	Notice of Intent has been filed with the Secretary of State and Legislative Council.
3. Authority	This rule is promulgated under the authority of ORS 343.045.
4. Effective Date	The proposed effective date of this rule is December 26, 1975.

5. Rule

Program Development

School districts operating or initiating special education programs shall have their programs approved by the Superintendent of Public Instruction in order to qualify such programs for state reimbursement.

Special education instructional programs shall range along a broad continuum and shall focus attention on meeting the individual needs of all resident handicapped children.

Special education shall be established and conducted as an integral part of the district's regular school program.

School districts shall be responsible for insuring that children who require special education enjoy the same rights and privileges provided to other students.

6. Annual Plan

In order to qualify for state reimbursement, the district school board shall submit to the Superintendent of Public Instruction an annual plan for the district's special education program. When approved the district shall carry out the program.

An approvable program for the education of handicapped children shall include:

(a) Procedures for locating, assessing, and re-assessing all handicapped children in the district.

(b) Specified criteria for establishing a child's eligibility to receive special education.

(c) Procedures for handling requests submitted by parents or guardians for special education for a handicapped child.

(d) Procedures for reviewing and modifying a handicapped child's special education program.

(e) Procedures for notifying parents or guardians of the termination of special education services.

(f) A staff schedule indicating name, type of teaching certificate, and assignment for each special education teacher employed by the district.

(g) Procedures to insure the confidentiality of handicapped children's records.

(h) Procedures for the internal evaluation of the special education program.

(i) A special education organizational chart.

(j) If the school district has one or more local advisory councils for handicapped children, describe the role of each council and to whom it reports.

ADMINISTRATIVE RULE 22-180

	Title 22-180	Rule for the Operation of State Reimbursed Special Education Programs.
1.	Purpose and Scope	This rule establishes guidelines relative to courses of study, admission, diagnosis, eligibility of pupils, size of special facilities, rooms and equipment, supervision, and territory to be served for school districts to provide services to handicapped children.
2.	Public Participation	Notice of Intent has been filed with the Secretary of State and Legislative Council.
3.	Authority	This rule is promulgated under the authority of ORS 343.055 (1).
4.	Effective Date	The proposed effective date of this rule is December 26, 1975.

5. Rule

Courses of Study

Special education programs shall meet the regulations prescribed by the State Board of Education in the Elementary-Secondary Guide for Oregon Schools.

Districts providing programs for educable mentally retarded children shall utilize the state-adopted curriculum guide or other guides approved by the Superintendent of Public Instruction.

6. Eligibility of Children

A child shall be considered eligible for special education when the school district has obtained written parental consent to conduct a diagnostic evaluation to determine a child's educational needs and when it has been verified that the child meets criteria established by the Department of Education in accordance with OAR 22-190. In instances where a child's eligibility has been established in another Oregon school district, the receiving school district shall obtain written consent from the parent or guardian to obtain school records upon which the child's eligibility was determined by the former district

7. Diagnosis

It shall be the responsibility of the school district, after receiving written parental consent, to provide for the diagnosis of a child referred for special education. The diagnosis shall consider the physical, educational, and psychological needs of the child with primary emphasis directed toward factors of educational significance.

Attention shall be given to the child's age, severity of the handicapping condition, extent of the educational problems, and the type of instructional service most appropriate.

A child whose primary language is other than English shall not be assigned to a special education program on the basis of criteria developed solely on the command of the English language.

8. Admission

At such time that the school district has verified that a child is eligible for special education, the school district shall notify the parents or legal guardian of the child's eligibility and proposed special education placement as defined in OAR 22-165. Such notification shall include a procedure for obtaining written consent from the parent or legal guaridan for the proposed educational placement.

9. Special Education Facilities

School districts operating special education programs shall provide appropriate space that meets state minimum standards.

10. Equipment and Supplies

School districts shall have the responsibility of providing appropriate instructional supplies and equipment required by handicapped children in obtaining an education commensurate with their abilities.

11. Supervision

Special education supervisors employed by school districts must possess the appropriate certificate issued by the Teacher Standards and Practices Commission.

12. Territory to be Served

School districts that have resident eligible handicapped children shall provide for their special education unless such children are receiving suitable instruction in a state or regional facility or institution.

13. Individual Student Records

In addition to OAR 22-250 special education programs shall also include the following information on handicapped children:

(a) Diagnostic information

(b) Prescriptive programming information

(c) Parent consent forms

(d) Report of learner progress

(e) Reasons for a child's placement or transfer in a special education program or termination of special education services.

PENNSYLVANIA

Commonwealth of Pennsylvania
Department of Education

BASIC EDUCATION CIRCULAR 71–75

DATE ISSUED	August 1, 1975
NUMBER OF SHEETS	1
DATE EXPIRES	Indefinite

THIS MATERIAL MAY BE REPRODUCED

Subject: State Board Regulations - Special Education

To:
Chief School Administrators
Intermediate Unit Executive Directors
School Board Secretaries
Area Vocational-Technical Schools
Elementary and Secondary Principals

From:
Harry K. Gerlach Harry K Gerlach
Acting Commissioner for Basic Education

At a special meeting on June 3, 1975, the State Board of Education adopted a revised Chapter 13: Special Education, 22 Pennsylvania Code, replacing the regulations adopted September 14, 1973.

The sections of the regulations extending due process procedures to all handicapped children became effective June 14, 1975, the date on which they were published in the Pennsylvania Bulletin. Section 13.21(A) extending due process procedures to gifted and talented children becomes effective July 1, 1976.

Attached is a copy of the revised regulations.

§13.23. Cooperative programs.

School districts may join in with other districts, intermediate units or the Department of Education in a cooperative arrangement to provide programs for gifted and talented school-aged persons.

PART III - DUE PROCESS PROCEDURES

§13.31. Opportunity for due process procedures for exceptional school-aged persons other than those who are mentally retarded or thought to be mentally retarded.

(a) The due process procedures as stated in this section of the regulations shall be applicable to all exceptional or thought to be exceptional school-aged persons not covered by the due process hearing procedures contained in Part IV in this Chapter.

(b) The parent of any school-aged person shall upon presentation to the school district of written evidence that their child is an exceptional or thought to be exceptional person and receiving less than an appropriate program of education and/or training, have the right to request due process procedures.

(c) The educational assignment of every exceptional or thought to be exceptional person must be evaluated not less than every two years, or annually upon the parent's request, and upon such re-evaluation, notice and opportunity to request due process procedures shall be provided.

(d) No exceptional or thought to be exceptional school-aged person shall be subjected to a change in educational status without first informing the person and the parent about the opportunity for due process procedures.

(e) The provisions of this section shall also apply to any exceptional or thought to be exceptional school-aged person who has never had an educational assignment.

(f) Due process procedures shall follow the outlined course of events described below:

(1) Parent conference. A parent conference shall be held for the purpose of a detailed explanation of a contemplated change in education or major modification of any exceptional or thought to be exceptional school-aged person's program.

(2) Formal due process hearing. Upon request of the parent, a due process hearing shall be held before a hearing officer who shall render a decision.

§13.32. School district initiated due process procedures.

The following procedures shall be complied with when the school district initiates the due process procedure:

(a) When any exceptional or thought to be exceptional school-aged person is recommended for a change in educational status by a school district, intermediate unit or any school official, notice of the proposed action shall first be given to the person and the parent. If the parent desires, the parent may, in writing, indicate satisfaction with the recommendation and waive the parent conference.

(b) A parent conference shall be initiated either at the request of the school or the request of the parent within ten days of the receipt of the notice.

(c) The parent may request complete evaluation by the school district or intermediate unit and if this has not been completed, it shall be complied with by the school district or intermediate unit prior to the parent conference.

(d) Prior to said conference the parents shall receive by certified mail, addressee only, return receipt requested, all information pertaining to the conference including but not limited to documentation of the reasons for the change in educational status (i.e., test used, results, etc.), what change in educational status is being recommended and other alternatives that are available for the individual and why these alternatives were not recommended.

(e) If the parent does not agree with the school evaluation, they may have an outside evaluation done at their own expense prior to the parent conference.

(f) At the parent conference the Chief School Administrator or his designee shall chair the conference. The conference shall include but not be limited to the guidance counselor, the evaluator(s) (to explain the tests and procedures), the person and the parent, and the evaluator(s) that did the testing for the parent.

(g) At the parent conference every effort shall be made to reach an amicable agreement keeping in mind the best interests of the individuals and in no way shall the parent conference take the place of the due process in these regulations.

(h) If the parent conference does not resolve differences, the parent may request a due process hearing. A due process hearing shall not be granted more than once annually from the date of the hearing.

(i) If a due process hearing is called for, it shall be scheduled not sooner than 15 days nor later than 30 days after receipt of the request in the Department of Education, provided, however, that upon showing good cause a reasonable extension of these times shall be granted at the request of the parent.

(j) The hearing shall be held in the school district and at a place reasonably convenient to the parent of the person. At the option of the parent, the hearing may be held in the evening and such options shall be set forth in the form requesting the hearing.

(k) The hearing officer shall be assigned by the Secretary, or designee, but shall not be an officer, employ, or agent of any school district or intermediate unit in which the person resides.

(l) The hearing shall be an oral, personal hearing, and shall be public unless the parent specifies a closed hearing.

(m) The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

(n) The proposed change in educational status or modification for appropriateness shall be approved only if supported by substantial evidence on the whole record of the hearing. Introduction by the school district or intermediate unit of the official report recommending a change in educational assignment, provided a copy of such report was given to the parent at the time notice was given, shall discharge its burden of going forward with the evidence, thereby requiring the parent to introduce evidence as contemplated in paragraphs p, q, and r of this section in support of the parent's contention.

(o) A record of the hearing shall be made and shall be available to the parent or the parent's representative. The record may be discarded after three years.

(p) The parent of the person may be represented at the hearing by any person of the parent's choosing, including legal counsel.

(q) The parent or the parent's representative shall be given reasonable access prior to the hearing to all records of the intermediate unit or school district concerning the person, including any tests or report upon which the proposed action may be based.

(r) The parent or the parent's representative shall have the right to compel the attendance of, and to question any witness testifying for the intermediate unit board, the school district board and any official, employe, or agent of the intermediate unit, school district, or the department who may have evidence upon which the proposed action may be based.

(s) The parent shall have the right to present evidence and testimony, including expert medical, psychological, or educational testimony.

(t) No later than 20 days after the hearing, the hearing officer shall render a decision in writing which shall be accompanied by written finding of fact and conclusions of law and which shall be sent by certified mail, return receipt requested, to the parent and the parent's representative.

(u) There shall be no change in the person's educational status without prior notice and the opportunity to be heard as set forth herein, except that in extraordinary circumstances the department, upon written request by the school district or intermediate unit setting forth the reasons therefor and upon notice to the parent, may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change. The department shall act upon any such request promptly and in any event within three days of its receipt.

(v) Any time limitation herein shall be construed and applied so as to do substantial justice and may be varied upon request and good cause shown.

(w) The decision of a hearing officer may be appealed to the Secretary of Education.

§13.33. Parent-initiated due process procedures.

The following procedures shall be complied with when the parent initiates the due process procedures:

(a) Any parent who believes their school-aged person is:

(1) Appropriately classified as an exceptional person, or

(2) An exceptional person classified as non-exceptional, or

(3) A non-exceptional person classified as exceptional, and

(4) Receiving less than an appropriate program of education and/or training, may, forward to the school district, written evidence which supports the parent's contentions.

(b) Upon receipt of the above documents the school district superintendent shall initiate, within ten days, a parent conference.

(c) At the parent conference the Chief School Administrator or his designee shall chair the conference. The conference shall include but not be limited to the guidance counselor, the evaluator(s) (to explain the tests and procedures), the person and the parent, and the evaluator(s) that did the testing.

(d) At the parent conference every effort shall be made to reach an amicable agreement keeping in mind the best interests of the individuals and in no way shall the parent conference take the place of the due process in these regulations.

(e) The school district shall prepare written evidence supporting the appropriateness of the person's classification and the program in which the person is currently enrolled and make this available to the parent or the parent's representative.

(f) Upon conclusion of the parent conference(s) the parent may, if unsatisfied with the school district's explanation, request a due process hearing.

(g) The due process conference shall follow steps, procedures (h) through (v), Section 13.32 of this Chapter.

PART IV - DUE PROCESS HEARINGS

§13.61. Notice and opportunity for a due process hearing.

(a) In Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa., 1971) the Commonwealth of Pennsylvania entered into and agreed to a stipulation pursuant to which the Court ordered that certain procedures be adopted and implemented by the Board. The stipulation requires compliance with the procedures set forth in this section before any change in the educational status of a mentally retarded child or a child thought to be mentally retarded may be made whether by exclusion or postponement of admission or excusal or in any other fashion, formal or informal.

(b) No child of school age who is mentally retarded or who is thought by any school official, the intermediate unit, parents or guardian to be mentally retarded, shall be subjected to a change in educational status without first being accorded notice and the opportunity of a due process hearing. The provisions of this section shall also apply to any child who has never had an educational assignment.

(c) The following procedures shall be complied with:

(1) Whenever any mentally retarded or allegedly mentally retarded child of school age is recommended for a change in educational status by a school district, intermediate unit or any school official, notice of the proposed action shall first be given to the parent or guardian of the child.

(2) Notice of the proposed action shall be given in writing to the parent or guardian of the child either at a conference with the parent or by certified mail to the parent, addressee only, return receipt requested.

(3) The notice shall describe the proposed action in detail, including specification of the statute or regulation under which such action is proposed and a clear and full statement of the reasons therefor, including specification of any tests or reports upon which such action is proposed.

(4) The notice shall advise the parent or guardian of any alternative education opportunities available to their child other than that proposed.

(5) The notice shall inform the parent or guardian of their right to contest the proposed action at a full hearing before the Secretary, or designee, in a place and at a time convenient to the parent, before the proposed action may be taken.

(6) The notice shall inform the parent or guardian of their right to be represented at the hearing by any person of their choosing, including legal counsel, of their right to examine before the hearing their child's school records including any tests or reports upon which the proposed action may be based, or their right to present evidence of their own, including expert medical, psychological and educational testimony, and of their right to call and question any school official, employe, or agent of a school district, intermediate unit or the department who may have evidence upon which the proposed action may be based.

(7) The notice shall inform the parent or guardian of the availability of various organizations, including the local chapter of the Pennsylvania Association for Retarded Children, to assist them in connection with the hearing and the school district or intermediate unit involved shall provide the address and telephone number of such organization in the notice.

(8) The notice shall inform the parent or guardian that they are entitled under the Mental Health and Mental Retardation Act of 1966 (50 P.S. §4101 et seq.) to the services of a local center for an independent medical, psychological, and educational evaluation of their child and shall specify the name, address and telephone number of the MH-MR center in their catchment area.

(9) The notice shall specify the following procedure for pursuing a hearing:

(i) If the notice is given at a conference with the parent, the parent may, at that conference, indicate their satisfaction with the recommendation and may in writing waive the opportunity for a hearing or, if dissatisfied, may in writing request a hearing. In either event, the parent may within five calendar days of the conference change this decision and may then request or waive the opportunity for a hearing by so indicating in writing to the school district or intermediate unit. If the parental decision is indicated at a conference, the parent shall be given a form which shall be mailed to the school district or intermediate unit within five calendar days thereafter, if the parent desires to change the decision. There shall be no change in educational assignment during the five-day period.

(ii) If notice is given by certified mail, the parent shall fill in the form requesting a hearing and mail the same to the school district or intermediate unit within ten days of the date of receipt of the notice.

(10) The hearing shall be scheduled not sooner than 15 days nor later than 30 days after receipt of the request for a hearing from the parent or guardian, provided, however, that upon good cause shown, reasonable extension of these times shall be granted at the request of the parent or guardian.

(11) The hearing shall be held in the local district and at a place reasonably convenient to the parent or guardian of the child. At the option of the parent or guardian, the hearing may be held in the evening and such option shall be set forth in the form requesting the hearing.

(12) The hearing officer shall be the Secretary, or designee, but shall not be an officer, employe, or agent of any local district or intermediate unit in which the child resides.

(13) The hearing shall be an oral, personal hearing, and shall be public unless the parent or guardian specified a closed hearing.

(14) The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

(15) The proposed change in educational status shall be approved only if supported by substantial evidence on the whole record of the hearing. Introduction by the school district or intermediate unit of the official report recommending a change in educational assignment, provided a copy of such report was given to the parent at the time notice was given, shall discharge its burden of going forward with the evidence, thereby requiring the parent to introduce evidence as contemplated in paragraphs (6), (18), (19), and (20) of this section in support of their contention.

(16) A stenographic or other transcribed record of the hearing shall be made and shall be available to the parent or guardian or their representative. The record may be discarded after three years.

(17) The parent or guardian of the child may be represented at the hearing by any person of their choosing, including legal counsel.

(18) The parent or guardian or their representative shall be given reasonable access prior to the hearing to all records of the school district or intermediate unit concerning their child, including any tests or reports upon which the proposed action may be based.

(19) The parent or guardian or their representative shall have the right to compel the attendance of, and to question any witness testifying for the school board or intermediate unit and any official, employe, or agent of the school district, intermediate unit, or the Department who may have evidence upon which the proposed action may be based.

(20) The parent or guardian shall have the right to present evidence and testimony, including expert medical, psychological, or educational testimony.

(21) No later than 20 days after the hearing, the hearing officer shall render a decision in writing which shall be accompanied by written findings of fact and conclusions of law and which shall be sent by registered mail to the parent or guardian and their representative.

(22) There shall be no change in the child's educational status without prior notice and the opportunity to be heard as set forth herein, except that in extraordinary circumstances the State Director of Special Education, upon written request to such person by the district or intermediate unit setting forth the reasons therefor and upon notice to the parent may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change. The Director shall act upon any such request promptly and in any event within three days of its receipt.

(23) Any time limitation herein shall be construed and applied so as to do substantial justice and may be varied upon request and good cause shown.

(d) Notice and the opportunity of a due process hearing, as set out in subsection (c) of this section shall be afforded on and after the effective date of the stipulation to every child who is mentally retarded or thought by any school official, the intermediate unit, or parents to be mentally retarded, before subjecting such child to a change in educational status as set forth in this section.

(e) Any educational assignment to other than a regular class shall be automatically re-evaluated every two years. If requested by the parent or guardian, the assignment shall be evaluated annually. Upon each evaluation, the school district shall give notice and opportunity for a hearing.

(f) A board of school directors shall not postpone or deny the admission of a child who has attained the chronological age established for admission to the district's schools without due process notice and hearing. However, when conditions warrant and subject to the due process procedures such child may be assigned in a timely manner to a free public program of education and training other than in a regular class.

§13.71. Right to education.

Pursuant to the order issued in Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), the Secretary, the Board, the School Districts, the Intermediate Units shall cease and desist from applying §§ 1304, 1318, 1326, 1330(2), 1371(1), 1372(3), 1375, and 1376 of the Public School Code of 1949 (24 P.S. §§ 13-1304, 13-1318, 13-1326, 13-1330(2), 13-1371(1), 13-1372(3), 13-1375 and 13-1376), except as follows:

> (1) Section 1304 (14 P.S. §13-1304) means only that a school district may refuse to accept into or retain in the lowest grade of the regular primary school or the lowest regular primary class above the kindergarten level, any child who has attained the mental age of five years. Any child whose admission to regular primary school or to the lowest regular primary class above kindergarten is postponed, or who is not retained in such school or class, is entitled to immediate placement in a free public program of education and training pursuant to sections 1371 - 1382 (24 P.S. §§ 13-1371 - 13-1382), which provide alternative programs of education and training for exceptional children.
>
> (2) Section 1318 (24 P.S. §13-1318) means that the suspension of a mentally retarded child under the same circumstances as a typical child might amount to punishment for a ramification of the very disability which a public school program of education is attempting to remedy. To avoid such a result, it shall first be concluded that a suspension or expulsion pursuant to section 1318 (24 P.S. §13-1318) is a change in educational assignment which would, except as provided in this section, require notice and a due process hearing.
>
> (3) Acknowledging, however, that a disciplinary problem with a mentally retarded child may be so immediate or severe as to require summary action, the parties in Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa., 1971) agreed to Amended Stipulation 3(V). Thus, in those cases which warrant immediate action, and after the approval of the State Director of Special Education, an interim change in the educational assignment, of a mentally retarded child, in the form of suspension, expulsion, or other placement, may be made so long as there is a due process hearing as promptly as possible after that interim change.

(4) Section 1326 (24 P.S. §13-1326) means only that the parents of a child have a compulsory duty, while the child is between eight and 17 years of age, to assure that child's attendance in a free public program of education and training. Furthermore, if a parent does not discharge the duty of compulsory attendance with regard to any mentally retarded child between eight and 17 years of age, then the Department shall take those steps necessary to compel the child's attendance pursuant to section 1327 (24 P.S. §13-1327) and any compulsory attendance regulations.

(5) However, section 1326 (24 P.S. §13-1326) does not limit the ages between which a child must be granted access to such a program. Section 1301 of the Public School Code of 1949 (24 P.S. §13-1301) requires that the Commonwealth provide a free public education to all children six to 21 years of age. Thus, no school district or intermediate unit may deny access to a free program of public education to any mentally retarded child age six through 21 years whose parents elect to enroll that child in such a program.

(6) Section 1330(2) (24 P.S. §13-1330(2)) means only that when a parent elects to voluntarily withdraw a child from public school attendance, that parent may be excused from liability under the compulsory attendance provision of §1326 (24 P.S. §13-1326) when that parent acquires the following:

(i) The approval of the local school board.

(ii) The approval of the Secretary.

(iii) A finding by an approved clinic or public school psychologist or psychological examiner, that the child is unable to profit from further public school attendance.

(7) Section 1371(1), (24 P.S. §13-1371(1)) means children aged six to 21. This phrase also means all mentally retarded children who have reached the age less than six at which pre-school programs are made available to other children either by the Department through any of its instrumentalities, such as local school districts or intermediate units, or by the Department of Public Welfare, through any of its instrumentalities. This construction should insure that preschool programs are equally available in Pennsylvania to mentally retarded and typical children, less than six years of age.

(8) Section 1372(3) (24 P.S. §13-1372(3)) means that homebound instruction is one of the options available to a school district where placement in a regular public school class is not possible. For a given mentally retarded child homebound instruction may be the only appropriate method for providing the free public program of education and training to which that child is

entitled, even though this is the least preferable type of educational program. Such instruction shall involve education and training for at least five hours a week. Pupils assigned to Homebound Instruction shall be re-evaluated not less than every three months with notice and opportunity for a hearing as set forth in §13.61 of this Title, (relating to notice and opportunity for a due process hearing).

(9) Section 1375 (14 P.S. §13-1375) means that insofar as the Department of Public Welfare will "arrange for the care, training, and supervision" of a child certified to it, the Department of Public Welfare will provide a program of education and training appropriate to the individual capacities of that child. This section further means that when it is found, on the recommendation of a public school psychologist and upon the approval of the local board of school directors and the Secretary, as reviewed in the due process hearing contemplated by the Court's Order of June 18, 1971, that a mentally retarded child would benefit more from placement in a program of education and training administered by the Department of Public Welfare than from any program of education and training administered by the Department, the child should be certified to the Department of Public Welfare for the timely placement in a program of education and training.

(10) Section 1376 (24 P.S. §13-1376) means the term "brain damage" as used in this section and as further defined in the Board of Education's "Criteria for Approval of Reimbursement" includes thereunder all mentally retarded persons. Accordingly, there should now be available to them tuition for day school and tuition maintenance for residential school up to the maximum sum available for day school or residential school, whichever provides the program of education and training more appropriate to the mentally retarded child's learning capacities.

Commonwealth of Pennsylvania
Department of Education

BASIC EDUCATION CIRCULAR 148

DATE ISSUED October 28, 1974	
NUMBER OF SHEETS	16
DATE EXPIRES Indefinite	

THIS MATERIAL MAY BE REPRODUCED

Subject: Right-to-Education - Amended
Due Process Stipulation and
Consent Agreement

To: Chief School Administrators
Intermediate Unit Executive Directors

From: Donald M. Carroll, Jr.
Commissioner for Basic Education

D M Carroll

This concerns a reissuance of Basic Education Handbook 131-000 (formerly School Administrators' Memorandum 522).

The primary purposes for issuing it are (1) to reaffirm the fact that the Right-to-Education Consent Agreement (Civil Action 71-42) is still in effect and (2) to make the documents available to new personnel who may not be familiar with the agreement.

It is particularly important for superintendents to insure that due-process hearing procedures are implemented quickly and properly.

Please refer all questions to:

Gary J. Makuch
Special Assistant
Right to Education
Pennsylvania Department of Education
Box 911
Harrisburg, Pa. 17126
717-787-6455

ORDER AND INJUNCTION

AND NOW, this 5th day of May, 1972, it is ORDERED that the AMENDED STIPULATION and AMENDED CONSENT AGREEMENT are APPROVED and ADOPTED as fair and reasonable to all members of both the plaintiff and defendant classes.

IT IS FURTHER ORDERED that the defendants; the Commonwealth of Pennsylvania, the Secretary of the Department of Education, the State Board of Education, the Secretary of the Department of Public Welfare, the named defendant school districts and intermediate units and each of the school districts and intermediate units in the Commonwealth of Pennsylvania, their officers, employees, agents and successors are ENJOINED as follows:

(a) from applying Section 1304 of the Public School Code of 1949, 24 Purd. Stat. Sec. 1304, so as to postpone or in any way deny to any mentally retarded child access to a free public program of education and training;

(b) from applying Section 1326 or Section 1330(2) of the School Code of 1949, 24 Purd. Stat. Secs 13-1326 and 13-1330(2) so as to postpone, to terminate or in any way deny to any mentally retarded child access to a free program of education and training;

(c) from applying Section 1371(1) of the School Code of 1949, 24 Purd. Stat. Sec. 13-1371(1) so to deny to any mentally retarded child access to a free public program of education and training;

(d) from applying Section 1376 of the School Code of 1949, 24 Purd. Stat. Sec. 13-1376, so as to deny tuition or tuition and maintenance to any mentally retarded person except on the same terms as may be applied to other exceptional children, including brain damaged children generally;

(e) from denying homebound instruction under 1372(3) of the School Code of 1949, 24 Purd. Stat. Sec. 13-1372(3) to any mentally retarded child merely because no physical disability accompanies the retardation or because retardation is not a short-term disability;

(f) from applying Section 1375 of the School Code of 1949, 24 *Purd. Stat.* Sec. 13-1375, so as to deny to any mentally retarded child access to a free public program of education and training;

(g) to provide, as soon as possible but in no event later than September 1, 1972, to every retarded person between the ages of six and twenty-one years as to the date of this Order and thereafter, access to a free public program of education and training appropriate to his learning capacities;

(h) to provide, as soon as possible but in no event later than September 1, 1972, wherever defendants provide a pre-school program of education and training for children aged less than six years of age, access to a free public program of education and training appropriate to his learning capacities to every mentally retarded child of the same age;

(i) to provide notice and the opportunity for a hearing prior to a change in educational status of any child who is mentally retarded or thought to be mentally retarded;

(j) to re-evaluate the educational assignment of every mentally retarded child not less than every two years, or annually upon the parents' request, and upon such re-evaluation, to provide notice and the opportunity for a hearing.

Arlin M. Adams
Arlin M. Adams, Circuit Judge

Thomas A. Masterson, District Judge

Raymond J. Broderick, District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN,
NANCY BETH BOWMAN, et al.

Plaintiffs

CIVIL ACTION
NO. 71-42

v.

COMMONWEALTH OF PENNSYLVANIA,
DAVID H. KURTZMAN, et al.

Defendants

AMENDED STIPULATION

AND NOW, this 14th day of February, 1972, subject to the approval and Order of the Court, it is agreed by the parties that the Stipulation of June 18, 1971, be amended to provide as follows:

1. Definitions

(a) "Change in educational status" shall mean any assignment or re-assignment based on the fact that the child is mentally retarded or thought to be mentally retarded to one of the following educational assignments: Regular Education, Special Education or to no assignment, or from one type of special education to another.

(b) "Department" shall mean the Pennsylvania Department of Education.

(c) "School District" shall mean any school district in the Commonwealth of Pennsylvania.

(d) "Intermediate Unit" shall mean the intermediate units as provided by the Pennsylvania School Code.

(e) "Regular Education" shall mean education other than special education.

(f) "Special Education" shall mean special classes, special schools, education and training secured by the local school district or intermediate unit outside the public schools or in special institutions, instruction in the home and tuition reimbursement, as provided in 24 Purd. Stat. Sec. 13-1371 through 13-1380.

(g) Wherever the word "Parent" is mentioned, it will include the term "Guardian" and the plural of each where applicable.

2. No child of school age who is mentally retarded or who is thought by any school official, the intermediate unit, or by his parents or guardian to be mentally retarded, shall be subjected to a change in educational status without first being accorded notice and the opportunity of a due process hearing as hereinafter prescribed. This provision shall also apply to any child who has never had an educational assignment.

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents heretofore or hereafter used by School Districts or Intermediate Units with regard to the educational assignment of children thought to be mentally retarded. Nor shall such consultations or conferences be in lieu of the due process hearing.

3. Within 30 days of the approval of this Stipulation by the Court herein, the State Board of Education shall adopt regulations, and shall transmit copies thereof to the superintendents of the School Districts and Intermediate Units, the Members of their Boards, and their counsel, which regulations shall incorporate paragraphs 1 and 2 above and otherwise shall provide as follows:

(a) Whenever any mentally retarded or allegedly mentally retarded child of school age is recommended for a change in educational status by a School District, Intermediate Unit or any school official, notice of the proposed action shall first be given to the parent or guardian of the child.

(b) Notice of the proposed action shall be given in writing to the parent or guardian of the child either (i) at a conference with the parent or (ii) by certified mail to the parent (addressee only, return receipt requested).

(c) The notice shall describe the proposed action in detail, including specification of the statute or regulation under which such action is proposed and a clear and full statement of the reasons therefor, including specification of any tests or reports upon which such action is proposed.

(d) The notice shall advise the parent or guardian of any alternative education opportunities available to his child other than that proposed.

(e) The notice shall inform the parent or guardian of his right to contest the proposed action at a full hearing before the Secretary of Education, or his designee, in a place and at a time convenient to the parent, before the proposed action may be taken.

(f) The notice shall inform the parent or guardian of his right to be represented at the hearing by any person of his choosing, including legal counsel, of his right to examine before the hearing his child's school records including any tests or reports upon which the proposed action may be based, of his right to present evidence of his own, including expert medical, psychological and educational testimony, and of his right to call and question any school official, employee, or agent of a school district, intermediate unit or the department who may have evidence upon which the proposed action may be based.

(g) The notice shall inform the parent or guardian of the availability of various organizations, including the local chapter of the Pennsylvania Association for Retarded Children, to assist him in connection with the hearing and the school district or intermediate unit involved shall provide the address and telephone number of such organization in the notice.

(h) The notice shall inform the parent or guardian that he is entitled under the Pennsylvania Mental Health and Mental Retardation Act to the services of a local center for an independent medical, psychological and educational evaluation of his child and shall specify the name, address and telephone number of the MH-MR center in his catchment area.

(i) The notice shall specify the procedure for pursuing a hearing.

If the notice is given at a conference with the parent, the parent may at that conference indicate his satisfaction with the recommendation and may in writing waive the opportunity for a hearing or, if dissatisfied, may in writing request a hearing. In either event, the parent may within five calendar days of the conference change this decision and may then request or waive the opportunity for a hearing by so indicating in writing to the school district or intermediate unit. If the parental decision is indicated at a conference, the parent shall be given a form which shall be mailed to the school district or intermediate unit within five calendar days thereafter, if the parent desires to change the decision. There shall be no change in educational assignment during the five day period.

If notice is given by certified mail, the parent must fill in the form requesting a hearing and mail the same to the school district or intermediate unit within ten (10) days of the date of receipt of the notice.

(j) The hearing shall be scheduled not sooner than fifteen (15) days nor later than thirty (30) days after receipt of the request for a hearing from the parent or guardian, provided however that upon good cause shown, reasonable extensions of these times shall be granted at the request of the parent or guardian.

(k) The hearing shall be held in the local district and at a place reasonably convenient to the parent or guardian of the child. At the option of the parent or guardian, the hearing may be held in the evening and such option shall be set forth in the form requesting the hearing aforesaid.

(l) The hearing officer shall be the Secretary of Education, or a person designated by him acting in his stead, but shall not be an officer, employee or agent of any local district or intermediate unit in which the child resides.

(m) The hearing shall be an oral, personal hearing, and shall be public unless the parent or guardian specifies a closed hearing.

(n) The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

(o) The proposed change in educational status shall be approved only if supported by substantial evidence on the whole record of the hearing. Introduction by the school district or intermediate unit of the official report recommending a change in educational assignment, provided a copy of such report was given to the parent at the time notice was given, shall discharge its burden of going forward with the evidence, thereby requiring the parent to introduce evidence (as contemplated in paragraphs f, r, s, and t herein) in support of his contention.

(p) A stenographic or other transcribed record of the hearing shall be made and shall be available to the parent or guardian or his representative. Said record may be discarded after three years.

(q) The parent or guardian of the child may be represented at the hearing by any person of his choosing, including legal counsel.

(r) The parent or guardian or his representative shall be given reasonable access prior to the hearing to all records of the school district or intermediate unit concerning his child, including any tests or reports upon which the proposed action may be based.

(s) The parent or guardian or his representative shall have the right to compel the attendance of, and to question any witness testifying for the school board or intermediate unit and any official, employee, or agent of the school district, intermediate unit, or the department who may have evidence upon which the proposed action may be based.

(t) The parent or guardian shall have the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(u) No later than twenty (20) days after the hearing, the hearing officer shall render a decision in writing which shall be accompanied by written findings of fact and conclusions of law and which shall be sent by registered mail to the parent or guardian and his representative.

(v) There shall be no change in the child's educational status without prior notice and the opportunity to be heard as set forth herein, except that in extraordinary circumstances the Director of the Bureau of Special Education, upon written request to him by the district or intermediate unit setting forth the reasons therefor and upon notice to the parent may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change. The Director shall act upon any such request promptly and in any event within three (3) days of its receipt.

(w) Any time limitation herein shall be construed and applied so as to do substantial justice and may be varied upon request and good cause shown.

4. The Department of Education shall revise its regulations to be in accord with the procedures agreed upon herein, shall disseminate the revised regulations to the school districts and intermediate units and shall thereafter file with the court and plaintiffs a statement of how and to whom said regulations and any covering statements were delivered.

5. Notice and the opportunity of a due process hearing, as set out in paragraph 3 above, shall be afforded on and after the effective date of the stipulation to every child who is mentally retarded or who is thought by any school official, the intermediate unit, or by his parents to be mentally retarded, before subjecting such child to a change in educational status as defined herein.

Ed Weintraub
Deputy Attorney General

Thomas K. Gilhool
Counsel for Plaintiffs

REGULATIONS EDUCATION OF HANDICAPPED CHILDREN

Issued by the

STATE DEPARTMENT OF EDUCATION

Roger Williams Building, Hayes Street
Providence 8, Rhode Island

Approved by the

RHODE ISLAND
STATE BOARD OF EDUCATION

December 19, 1963

REGULATIONS GOVERNING THE EDUCATION OF THE EMOTIONALLY HANDICAPPED

The following regulations are in addition to the General Regulations governing the Special Education of Handicapped Children.

I. Definition

A. The Emotionally Handicapped - a child whose diagnosed social and/or emotional problem is so severe that adjustment to a regular class appropriate for his age is precluded.

II. Procedure for Determination of Eligibility for Special Education for the Emotionally Handicapped

A. An overall evaluation including general medical, psychiatric, educational and clinical psychological examination.

B. An analysis of the evaluation by the community school psychologist.

C. A specific recommendation for placement by the community supervisor of special education on the basis of the overall evaluation and analysis by the school psychologist, and consultation with the parent(s) or guardian(s).

III. Special Education Programs for Emotionally Handicapped Children

A. Pre-School Programs

1. A community having eight or more emotionally handicapped children, whose needs, as judged by the evaluative procedure, can best be met in community pre-school classes, shall establish pre-school classes for emotionally handicapped children; or

2. A community may utilize pre-school programs operated by other communities or agencies whose pre-school programs are approved by the Commissioner of Education.

B. School Programs

1. A community having eight or more emotionally handicapped children of school age and within a chronological age range of five years whose needs, as judged by the evaluative procedure, can best be met in a special class for emotionally handicapped children, shall establish such special classes as may be necessary to provide instruction adapted to the needs of such children.

2. A community having fewer than eight resident emotionally handicapped children which does not establish a special class shall provide for the free education of any resident emotionally handicapped child in either a public school class in another community or in a program approved by the Commissioner of Education.

Regulations - Education of Handicapped Children (adopted December 19, 1963 and amended June 15, 1972) are hereby amended by adding IX to the first section entitled General Regulations of the Board of Regents Governing Special Education of Handicapped Children.

IX Procedural Safeguards

A. LEA Responsibility

1. Each LEA shall establish and maintain procedures to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate education by such agency. Such procedures shall include but need not be limited to:

   a. Written prior notice to the parent or guardian whenever the LEA proposes to initiate or change or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate education.

   Such notice shall include a description of the action proposed and of the safeguards afforded to parents or guardians and the procedures by which they may avail themselves of these safeguards.

   It shall include a form to be signed and returned by the parents giving consent or objecting to the proposed action by the LEA.

   It shall inform the parents that no such action will be initiated by the LEA without consent of the parents, but that failure to respond within 10 school days will be deemed to be consent, and the action will be initiated by the LEA.

   It shall contain specific information - name, address and telephone number - concerning the LEA staff person who will assist the parents in availing themselves of all safeguards, and shall be written, whenever possible, in the parents' spoken language.

   b. An opportunity for a conference with the local Supervisor of Special Education no later than 10 school days after receipt of a request, at which time all of the relevant records with respect to the identification, evaluation and placement of the child shall be made available for the parents to examine.

   c. An opportunity for the parents to obtain (at their expense) an independent educational evaluation of the child.

d. A procedure to protect the rights of the child whenever the parents or guardians of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State Education Agency or Local Education Agency which is involved in the education or care of the child) to act as surrogate for the parent or guardian.

e. An opportunity to appeal to the school committee if the conference with the Special Education Supervisor does not result in a recommendation acceptable to the parents.

Immediately following the conference in A-1-b, the Supervisor of Special Education shall submit a recommendation in writing to the Superintendent of Schools who shall review the recommendation and shall notify the parents of his decision within ten days after the conference.

If the decision of the Superintendent of Schools is not acceptable to the parents, then within ten school days, they may appeal to the School Committee.

A hearing shall be held by the School Committee or its designated hearing officer and a decision shall be given not later than thirty days after the appeal.

A copy of the decision shall be mailed to the parents, together with a notice informing them of their right to and procedure for further appeal.

B. Procedures for Appeal From Decisions of LEAs

A parent or guardian not satisfied with the decision of the School Committee may continue his appeal under provisions of Chapter 16-39 of the General Laws of Rhode Island 1965 as amended.

C. Rights Related to Hearings

Any party to any hearing pursuant to Sections A and B above shall be accorded:

1. the right to be accompanied and represented by counsel and by individuals (no more than 3) with special knowledge or training with respect to the problems of handicapped children;
2. the right to present evidence and confront and cross-examine witnesses;
3. the right to a written or electronic verbatim record of such hearings, at cost to the party;
4. the right to written findings of fact and decisions.

D. Placement of Child During Pendency of Proceedings

During the pendency of any proceedings conducted pursuant to A. and B. above, unless the SEA or the LEA and the parents or guardians otherwise agree, the child shall remain in his/her current educational placement, or, if applying for initial admission to a public school, shall, with the consent of the parent or guardian, be placed in a regular class in the public school program until all such proceedings have been completed. The sole exception in either case shall be when the Superintendent upon substantial evidence determines that the child will be an immediate danger to himself or to others. Any such decision may be contested through the procedures in A. and B. above.

E. Rights of Parents to a Hearing

Not withstanding any time limits prescribed above, parents or guardians have the right to request a conference with the local Supervisor of Special Education at any time when they believe that a decision substantially altering the educational placement of their child has been made.

F. Effective Date

This Section shall become effective upon adoption by the Board of Regents for Education.

SOUTH CAROLINA

NEW FEDERAL REGULATIONS AS REQUIRED BY PUBLIC LAW 93-380

OFFICE OF PROGRAMS FOR THE HANDICAPPED

STATE DEPARTMENT OF EDUCATION

DUE PROCESS

I. DEFINITIONS

A. Due Process. This term means "notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. The guarantee of 'due process' requires that every man have protection of day in court and benefit of general law."[1]

B. Parent. The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures outlined herein. The term "parent" also includes the child if he has reached the age of majority.

C. Notification. In all procedures regarding a due process hearing terms such as "notice" and "notification" shall mean (1) written statement in the primary language of the home by registered mail, and (2) oral communication in the primary language of the home. In procedures regarding "written permission" for evaluation and placement, the initial notification may be by regular mail and by oral communication. In cases where the parents fail to reply, subsequent notification shall be provided by registered mail.

D. Impartial Hearing Officer. The term "impartial hearing officer" means a person or tribunal of persons assigned by the local education agency at a due process hearing. It is the hearing officer's duty to assure that proper procedures are followed and that the rights of the parties are protected.

An impartial hearing officer must be:

1. Unbiased--not prejudiced for or against any party involved in the hearing.
2. Disinterested--not having any personal interest at stake in the outcome.
3. Independent--may not be an officer, employee or agent of the LEA.

E. "Days". Mean normal working days.

F. "Surrogate Parent". Means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

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[1] Dimke v. Finke, 209 Minn., 29 295 N.W. 75, 79.

II. PROCEDURES FOR EVALUATION AND PLACEMENT OF THE CHILD IN SPECIAL PROGRAMS

A. Written Permission. Written permission must be obtained from the parent prior to an individual evaluation of a child. In circumstances where a child's parents are not known, are unavailable, or the child is a ward of the state, the child shall be assigned a parent surrogate by the LEA (See Appendix A). An LEA-Parent conference shall be conducted to explain the rights and the due process procedures to parents.

B. Evaluations.

1. Within ten working days after permission for evaluation is obtained, the chairperson of the evaluation team shall notify the parent as to the schedule for the evaluation. This notice shall contain the following information:

   a. The reasons for the requested evaluation and the name of the person who initiated the process.

   b. The evaluation procedures.

   c. A description of the limitations of the testing procedures and instruments.

   d. A statement of the parent's right to review all relevant records.

   e. A statement of the parent's right to review the procedures and instruments.

   f. A description of how the finding of the evaluations will be used.

   g. A statement of the parent's right to refuse permission for the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evaluation.

   h. A statement of the parent's right to be fully informed of the results of the evaluation.

   i. A declaration that the child's educational status shall not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.

2. Within thirty days of notifying the parent of the evaluation schedule, the evaluation will be completed.

e. Within ten working days after the evaluation is completed, the parent shall receive notification of the results of the evaluation, and the educational implications.

C. Placement of the Child.

1. Within ten days after the evaluation, the parent shall be informed that an individual educational plan will be developed and the parent shall be given the opportunity to participate in the formulation of the plan.

2. Within ten days after presentation of the results of the evaluation and educational implications, the chairperson of the placement committee shall notify the parents by registered mail and orally that a change in placement of the child's educational plan is proposed. This notice shall contain:

   a. The proposed individualized special educational plan, the method by which it was developed, the reasons why the proposed placement is deemed appropriate for the education of the child, and the reasons why it is the least restrictive program appropriate for the education of the child.

   b. Specific tests, reports, or evaluation procedures upon which the proposed educational placement is based.

   c. A statement that school reports, files, and records pertaining to the child shall be available for inspection and copying at reasonable cost.

   d. A statement describing in detail the right to obtain a due process hearing and a description of all of the rights regarding the procedures of such a hearing if there are objections to the proposed placement.

   e. A list of those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel.

   f. A statement of the opportunity to obtain an independent evaluation of the child at public expense, including the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost.

   g. A description of the procedures for appealing the decision resulting from the due process hearing (see Part V).

   h. A statement that the child shall remain in the present educational program until such time as there is a decision following the due process hearing or until the proposed educational placement is accepted by the parties. (In emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement shall be made earlier by order of the hearing officer).

i. A statement that no more than eight months after the child has been placed in the program recommended by the evaluation team and annually thereafter, the LEA shall conduct an initial periodic review of the program to evaluate the effectiveness of the program in meeting the special educational needs of the child. Upon request, the parent shall obtain an initial review at any time after the first three months of the child's placement. During the periodic review the parent shall have all the rights of due process.

j. If the LEA, after ten days from the date of sending the initial notice or subsequent notice, does not receive a request for a hearing, the placement shall take effect.

D. Periodic Review. At least five days before the periodic review is to begin, the LEA shall notify the parents. The notice shall include:

1. The time that the review will take place.
2. A description of the procedures to be used in the review.
3. An invitation to the parent to participate in the periodic review.
4. A statement that the parent shall receive the findings and recommendations of the periodic review within ten days after completion of the review.
5. A statement containing the procedures for changing the child's educational status or for obtaining an alternative evaluation if the review indicates the need for such.

III. PROCEDURES FOR DUE PROCESS HEARING REQUESTED BY LEA

A. If a parent fails to respond within ten days to the LEA's attempts by means of registered mail, telephone, home visit, etc., to obtain consent for evaluation, the LEA has the right to request a hearing to obtain approval to conduct an evaluation. If such a hearing is requested, the LEA shall notify the parent by registered mail and orally on the same day as the request for a hearing is filed. This notice shall include:

1. A copy of the original notice requesting permission for the evaluation.
2. A statement that school files, reports and records pertaining to the child shall be available for inspection and copying at reasonable cost.
3. A detailed description of all of the rights regarding procedures at the due process hearing.

4. A list of those agencies in the community from which legal counsel may be obtained for those unable to pay.

5. A statement of the parent's right to a judicial appeal of the decision resulting from the due process hearing.

B. Prerequisites to a Hearing. Prior to the holding of a due process hearing, the following shall have occurred:

1. Prior notice, as described above, shall have been provided to the parent.

2. The parent shall have been allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.

3. An impartial, trained hearing officer shall have been appointed to preside at the hearing within five days after a request for a hearing.

4. The hearing officer shall have provided to the parent or to the officials of the local education agency notification as to the time and place of the hearing within five days after his appointment. The notification shall be given at least twenty days prior to the hearing and the hearing shall be scheduled at a time and place convenient to the parent.

5. The parent shall have the right to compel the attendance of any officer, employee or agent of the local education agency or the state education agency, who may have evidence or testimony relevant to the question of the adequacy or appropriateness of the proposed evaluation.

6. The child shall remain in the present educational program until the hearing. In emergency situations, however, where the health and safety of the child or of other persons would be endangered by continuing the present program, a change in program may be made earlier by written order of the hearing officer.

C. Due Process Hearing. A due process hearing shall be conducted in accordance with the following procedures:

1. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner. All the parties involved in the hearing shall have an opportunity to present their evidence and testimony.

2. The parent and the local education agency may have legal counsel and witnesses at the hearing.

3. The hearing shall be closed to the public unless the parent requests an open hearing.

4. The parent and the local education agency and their respective representatives shall have the right to present evidence and testimony.

5. The parent and the local education agency and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.

6. The parent shall have the right to determine whether the child will attend the hearing, if the child is under the age of majority. In certain cases, however, the hearing officers may rule that the child shall be excluded from portions of or from the entirety of the hearing if the welfare of the child would be jeopardized.

7. The burden of proof as to the adequacy and appropriateness of the proposed evaluation procedures shall be upon the local education agency.

8. A tape recording or other verbatim record of the hearing shall be made.

9. Interpretations in the primary language of the home and for the deaf shall be provided during the due process hearing at public expense, when necessary.

D. Decision of the Hearing Officer. Within five days after the hearing, the hearing officer shall issue a decision in accordance with the following requirements:

1. The decision shall be in writing and shall be sent by registered mail to the parent, to the local education agency, and to their respective representatives.

2. The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions. The decision shall either approve or disapprove the proposed evaluation or placement.

3. The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.

4. A summary of the proceedings at the hearing shall be made available to all parties; it shall include any materials or statements specifically requested by any of the parties.

5. A copy of the tape recording or other verbatim record of the hearing shall be transcribed and provided, at the expense of the LEA, upon request of the parent or the LEA.

6. The decision of the hearing officer shall include a statement of the parent's right to a judicial appeal (see Part V).

7. The decision of the hearing officer shall be binding to the parent and to the local education agency, its officers, employees and agents, subject only to judicial appeal.

Within five days after a final decision following the due process hearing, the chairperson of the evaluation team shall notify the parent as to the schedule for the evaluation (see Part II, Section B).

IV. PROCEDURES FOR "DUE PROCESS" HEARING REQUESTED BY PARENTS

A. The parent has the right to request a due process hearing concerning a proposed change in the educational status of the child, proposed placement in a special education program, denial of such placement, or periodic review of the special education program for the child; the parent also has the right to request an alternative evaluation. The procedures prior to the hearing shall be the same as those required when the hearing is requested by the LEA (see Part III, Section B).

B. Procedures of "Due Process" Hearing. (See Part III, Section C).

C. Decision of Hearing Officer. (See Part III, Section D).

V. RIGHT TO APPEAL

Within ten days after a decision by the hearing officer, a judicial appeal may be initiated by a parent or the local education agency, its officers, employees and agents. The appeal shall be conducted in accordance with statutes governing proceedings of judicial appeals.

SUMMARY

The model which has been developed provides a systematic approach in dealing with the complicated legal aspects of "due process". The basic rights guaranteed by "due process" have been identified and summarized as the following:

Rights of child under the age of majority.

1. Right to have parent surrogate.
2. Right to request change of parent surrogate.

Rights of the Parent.

1. Right to deny permission for evaluation of placement of child in special program.
2. Right to review all school records.
3. Right to request an alternative evaluation.
4. Right to request a hearing.
5. Right to be present at hearing, to request the presence of certain witnesses and to question all witnesses.
6. Right to request re-evaluation subsequent to placement.
7. Right to appeal decision of hearing officer.

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
SECTION FOR EXCEPTIONAL CHILDREN

RULES AND REGULATIONS

EFFECTIVE JULY 1, 1974

CHAPTER 13H.2

SCREENING AND EVALUATION

Section
13H.201 Screening committee for exceptional children.
13H.202 Identification of exceptional children.
13H.203 Initial screening of exceptional children.
13H.204 Formal screening of exceptional children.
13H.205 Evaluation of exceptional children.
13H.206 Qualifications of evaluators.

13H.201 Screening committee for exceptional children. Each district shall establish a screening committee for exceptional children. The committee shall consist of the school physician; speech, language, or hearing clinician; school nurse; school psychologist; teachers; guardians; director of special education; and administrator. If any of the above personnel are not available, the district administrator shall select a representative in that area of expertise or obtain approval from the division for a committee of different composition. The screening committee shall:

(1) Design or designate a questionnaire for guardians to assist in identifying exceptional children;

(2) Design or designate questions to be asked of teachers in conjunction with the needs assessment to assist in identifying exceptional children;

(3) Design or designate a formal diagnostic screening mechanism and determine the criteria to be used in selecting those children who shall be referred for evaluation.

General Authority: SDCL 13-1-30, Law Implemented: SDCL 13-37-15. 13-37-14, and 1-45-6.

13H.202 Identification of exceptional children. By January 1, 1975, each district shall identify through an initial screening all children in the district to select those suspected of being exceptional who shall be referred for a formal screening. All new children shall be screened as they enter school. Preschool age children shall be included in the identification processes at the request of the guardian, or they shall be identified through a screening process designed by the committee for preschool age children.

General Authority: SDCL 13-1-30, 13-37-14, and 1-45-6. Law Implemented: SDCL 13-37-15.

13H.203 Initial screening of exceptional children. The initial screening shall consist of a questionnaire to be filled out by the guardian of each child and a needs assessment to be completed by the teachers. The guardian questionnaire shall request information on the medical and physical condition of the child as well as past educational experiences. Guardian and teacher consultations shall be held annually for those children demonstrating potential problems based on the initial screening.

General Authority: SDCL 13-37-14, 13-1-30, and 1-45-6. Law Implemented: SDCL 13-37-15. and 13-37-14.

13H.204 Formal screening of exceptional children. The formal screening, with guardian permission, shall include but not be limited to one or more of the following: hearing, vision, speech, language, physical, emotional, mental. All children with suspected exceptionalities as determined by the initial screening shall be provided a formal screening. The screening shall be performed by a person trained in the use of a standardized screening instrument.

General Authority: SDCL 13-37-14, 13-1-30, and 1-45-6. Law Implemented: SDCL 13-37-15 and 13-37-14.

13H.205 Evaluation of exceptional children. The evaluation shall consist of procedures and assessment techniques determined by the nature and degree of the child's exceptionality. All children identified by the formal screening as potentially exceptional shall be referred, with guardian permission, for an evaluation. Pertinent information from the screening process and school records shall be made available to the appropriate evaluator with guardian permission. Every evaluation, when complete, shall provide data that can be used by the teacher and guardian in planning an instructional program for the child.

General Authority: SDCL 13-1-30, Law Implemented: SDCL 13-37-4, 13-37-14, and 1-45-6.

13H.206 Qualifications of evaluators. Personnel eligible to provide an evaluation shall meet the following South Dakota requirements in their area of evaluation, or the equivalent requirements in the state in which they are practicing:

(1) An educational evaluator shall have a valid South Dakota teaching certificate and shall have had classroom teaching experience. The evaluator may be but not limited to a teacher, guidance counselor, special education director, or school psychologist;

(2) A psychological evaluator shall be a certified or licensed psychologist or psychiatrist;

(3) A speech, language, or hearing evaluator shall have a valid South Dakota certificate as a speech, language, or hearing clinician, or a certificate of clinical competence in speech pathology or audiology from the American Speech and Hearing Association;

(4) A medical evaluator shall be licensed by the State Board of Medical and Osteopathic Examiners;

(5) An occupational therapy evaluator shall be registered by the American Occupational Therapy Association.

(6) A physical therapy evaluator shall be licensed by the State Board of Medical and Osteopathic Examiners.

General Authority: SDCL 13-1-30, Law Implemented: SDCL 13-37-4. 13-37-14, and 1-45-6.

SOUTH DAKOTA

II. PROCEDURAL SAFEGUARDS
(EHA-B: 613(a)(13))

Following are the procedures adopted by this SEA for insuring that handicapped children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children.

A. Due Process Guarantees. The following due process procedures have been adopted by this SEA to comply with Section 613(a)(13)(A)(i)-(iv)

1. Definitions

a. Parent. The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures set out herein. The term "parent" also includes the child if he has reached the age of majority.

b. Notification. Terms such as "notice" and "notification" include (1) written statements in English and in the primary language of the parent's home, and (2) oral communication in the primary language of the home.

c. Parental Counsel. Any person designated by the parent to provide advise to the parent before, during or after the placement hearing.

d. "Days" -- means calendar days.

e. "Surrogate Parent" -- means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the state. Surrogate parents will not be employees of the SEA or LEA involved in the education or care of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

f. Impartial Hearing Officer. The term "impartial hearing officer" means a person or tribunal of persons assigned to preside at a due process hearing and whose duty it is to assure that proper procedures are followed and that the rights of the parties are protected. An impartial hearing officer must be:

(1) unbiased -- not prejudiced for or against any party involved in the hearing;

(2) disinterested -- not having any personal interest at stake in the outcome; and

(3) independent -- may not be an officer, employee or agent of the LEA. (Such person(s) should be employed by the SEA, either at the regional level or in the central office.)

B. Due Process Procedures

1. Parental Permission for Testing. When there is reason to believe that a child is in need of special education services, and such a child becomes the subject of individual evaluation procedures (formal testing, informal assessment, observation), then advanced written permission for such procedures to be used should be obtained from the parents. The letter requesting permission for such testing should contain the following:

a. The reasons the evaluation has been requested, and the name of the person who initiated the process,

b. a statement of the right to refuse to permit the evaluation, with the understanding that the LEA can request a hearing to present its reasons and try to obtain approval to conduct the evalua-

c. a statement of the right to review all relevant records and to be fully informed of the results of the evaluation, and

d. a declaration that the child's educational status will not be changed without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.

2. Parents Refusal. If the parents refuse to give permission, the LEA should attempt to seek resolution through an individual conference(s). If the parents still refuse to allow the proposed evaluation, the LEA should either accept the decision or appeal to the (State) hearing officer. On appeal, a full adversarial hearing, meeting the requirements set out below, will be held. In such a hearing, the burden of proof is on the LEA to demonstrate that the continued placement of the child is so dangerous to his/her health or safety or so disruptive to the program for the other children that the initiation of the evaluation procedure is justified as the first step to a special program placement.

3. Parents Failure to Respond. If a parent fails to respond at all to the LEA's repeated attempts by means in addition to regular mail (e.g. telephone, home visit) to obtain consent for evaluation, then the LEA can proceed with the evaluation of special needs. The hearing officer should provide notice to the parent regarding his/her full due process rights in this proceeding. In order for the LEA to prevail, it must:

(a) demonstrate with documentation that it has repeatedly attempted to contact the parent through efforts that were reasonably likely to succeed; and

(b) establish with facts about the child's performance in his/her present placement that there is reasonable likelihood that the child will be found to have special needs.

4. Prior Notice. Whenever a change is proposed in a child's educational program (including proposed changes resulting from periodic reviews), or when a parent's request for a different placement for the child is denied, the LEA must notify the parent in advance of the proposed action. Such notice should be presented orally and in writing, via certified mail. The written notice should:

(a) Describe in detail the proposed or requested action and the reasons why such action is deemed appropriate or inappropriate for the child.

(b) Specify any tests or reports upon which the proposed or requested action is based.

(c) State that school files, records, and reports pertaining to the child will be available for inspection and copying at reasonable cost.

(d) Describe in detail the right to obtain a due process hearing if there are objections to the proposed or requested action, including a description of all of the rights regarding procedures at such a hearing. Such objections should be made by the guardian or parents within ten days of receipt of written notice.

(e) List those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel themselves.

(f) Indicate the opportunity to obtain an independent evaluation of the child at public expense and including the names, addresses and telephone numbers of appropriate public agencies where such services can be obtained at no cost.

(g) When the proposed or requested action involves placement or denial of placement, describe any alternative educational placements which are similar to regular class settings than is the proposed placement, and give the reasons why such alternative placements are not appropriate for the child.

(h) Describe the procedures for appealing the decision resulting from the due process hearing.

(i) State that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. (In an emergency situation where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the hearing examiner).

5. Impartial Due Process Hearing. Following written notice and upon request for a hearing, the procedures set forth below should be followed:

(a) Prerequisites to a hearing. Before the actual hearing is conducted, the following steps should take place:

1. Prior notice as described in Section 4, preceeding, should be provided to the parents.

2. The parents should be allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.

3. The parents should be provided the opportunity to obtain an independent evaluation of the child's educational needs at public expense.

4. An impartial trained hearing officer should be appointed to preside at the hearing.

5. The hearing officer should provide to the parents and to the officials of the LEA notification as to the time and place of the hearing, which should be a time and place reasonably convenient for the parents.

6. The parents should be given the opportunity to exercise their

right to compel the attendance at the hearing of any officer, employee or agent of the local education agency or State Education Agency who may have testimony or evidence relevant to the question of the needs, abilities, proposed process or status of the child; and

7. Steps should be taken to assure that the child will remain in his/her present educational placement until the hearing officer enters a decision following the hearing (except that in emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by written order of the hearing officer).

6. Procedures at the hearing. The due process hearing should be conducted in accordance with the following procedures:

a. The hearing officer will preside at the hearing and should conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony;

b. The parents and the LEA may have representatives, including but not limited to legal counsel or other professional persons, attend the hearing;

c. The hearingshould be closed to the public unless the parents request an open hearing;

d. The parents and the LEA, or their respective representatives, have the right to present evidence and testimony;

e. The parents and the LEA and their respective representatives should have an opportunity to confront and question all witnesses at the hearing.

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f. If the child is over the age of majority, he or she should have the right to attend the hearing;

g. If the child has not reached the age of majority, the parents have the right to determine whether he/she should attend the hearing, except that upon a finding by the hearing officer that attendance by the child would be harmful to the (his/her) welfare, the child may be excluded from portions of or the entirety of the hearing;

h. The burden of proof as to the appropriateness of any proposed placement, as to why more normalized placements could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the local educational agency;

i. A tape recording or other verbatim record of the hearing should be made.

j. At all stages of the due process procedures, interpreters for the deaf and when needed interpreters fluent in the primary language of the home should be provided at public expense.

7. Decision of the hearing officer. The hearing officer's decision should be issued in accord with the following requirements:

a. Such decision should be in writing and should be sent by certified mail to the parents, to the LEA, and to their respective representatives;

b. The decision of the hearing officer should include findings of fact, conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed education program, it should include a statement as to what is an adequate and appropriate educational program for the child. If the decision is to approve a proposed educational program it should include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs;

c. The decision of the hearing officer should be based solely on evidence and testimony presented at the hearing;

d. A summary of the proceedings at the hearing should be made, into which should be included any materials or statements specifically requested by any of the parties to appear in the record, and such summary should be made available to the parties to the hearing;

e. Upon request of the parents or the LEA, a copy of the tape recording or other verbatim record of the hearing should be transcribed and provided;

f. A statement should be included that the decision of the hearing officer is binding upon the parents or the child if over the age of majority, and upon the local education agency, its officers, employees and agents, subject to procedures for administrative or judicial appeal.

g. The decision of the hearing officer should include a statement of the procedures, to be used for appealing such decision.

8. Appeals. Appeals may be initiated by a parent or by the LEA. Such appeal of a decision of the hearing officer should be heard by the State board of education or its impartial designee. Any such designee, should meet the same qualifications required of all hearing officers. The appeal should be conducted in accordance with the state administrative procedure act or other statutes governing appeals of administrative proceedings, and an opportunity should be provided to the parents to appeal the decision of the State board of education or its impartial designee to a state court.

NOTE: Generally, if parents reject the decision of the hearing officer at the initial hearing, such rejection should automatically constitute an appeal (1) to the State board of education or its designee, and, subsequently (2) to the courts. Thus, it is not necessary for the parents to separately request such an appeal(s).

RULES, REGULATIONS, POLICIES, AND GUIDELINES
GOVERNING THE DEVELOPMENT OF
PROGRAMS AND SERVICES FOR THE HANDICAPPED

1975-76

State of Tennessee
DEPARTMENT OF EDUCATION
Sam H. Ingram, Commissioner

June, 1975

Compulsory Attendance

TCA 49-1708 mandates compulsory attendance of a child who is between seven and sixteen years of age, inclusive, and parents must assure the child's attendance in a program of education, but this law does not limit the ages between which a handicapped child must be granted access to a free program of education. If a parent does not discharge the duty of compulsory attendance with regard to any handicapped child between seven and sixteen years of age, inclusive, the local school system must and shall take those steps necessary to compel the child's attendance. The local school system still has the responsibility for providing special education, corrective, and supportive services for handicapped children below seven years of age and above seventeen years of age if requested by the parents or child.

5. Procedural Due Process

The State Department of Education recognizes that the education of a child is the responsibility of both the local school system and the parent, surrogate parent, or guardian of such child. The provision of programs and adequate services requires a cooperative planning effort between the school and the parent, surrogate parent, or guardian, and an acceptance of mutual responsibility for coordinating the implementation activities and tasks in the child's individual education plan. Every effort must be made by both parties to insure that the best possible educational programs and services are provided the child. Certain procedures must be followed to insure that the rights of the child and parents are protected.

5 3

a. When there is reason to believe that a child may be in need of special education, corrective, or supportive services, and such a child becomes the subject of individual assessment procedures different from those utilized for the total classroom, grade, or school and from which data may be used for placement for special education services, written parent, guardian, or surrogate parent permission shall be obtained.

b. When a local school system recommends special education, corrective, and/or supportive services for a child, including any change, discontinuance, denial of service or initiation of a new service, the parent, guardian, or surrogate parent shall be notified along with a statement of the right to review the basis for placement, alternative placement options considered, and procedures for giving consent to placement or requesting a review.

c. The local school system shall make available all personally identifiable data on a child to the parent, guardian, or surrogate parent, and such data shall not be provided any other agency except by an order of the court, or with written parent, guardian, or surrogate parent consent, or to a State agency for auditing or monitoring responsibility.

The burden of proof for recommending and providing special educational services shall be on the local school system, rather than on the individual child or his parents or guardian. Demonstration of need for special education services must be determined and documented by the local school system. These services must be appropriate for the child, be provided in the least restrictive environment, and continue no longer than needed to meet the needs of the child.

Since the executive officer of the local school system has the responsibility for local decisions, arrangements should be made through the local principal for the child, parent, or guardian to have a conference with the appropriate persons concerning the placement which the child, parent, or guardian feels to be inappropriate. If, however, agreement cannot be reached concerning such placement and a formal hearing is requested, the prescribed review procedure shall be utilized. (For further details, see section on due process.)

6. Least Restrictive Alternative

To the extent practicable, pupils requiring special education services shall be educated in the regular school program of the local school system in such manner as to make maximum use of and provide maximum integration with instructional and other school programs for pupils who are not handicapped. Supplementary equipment, facilities, and remedial or other services as may be necessary shall be furnished to enable handicapped students to perform satisfactorily in the normal learning environment of the school. Special classes, facilities, and services shall be provided outside the regular school program only for those pupils for whom the regular instructional program cannot be made appropriate with or without supporting services for pupils or staff; when other locations are necessary for the proper performance of special education, supportive, or correctional services; or when such performance requires equipment, facilities, or personnel not reasonably and efficiently accommodated on the premises of the regular schools.

Guidelines to Insure Due Process

Local school systems have a responsibility to involve parents in the placement of handicapped children. In compliance with this responsibility and the Order of the Court, dated July 29, 1974, the following regulations are to be followed:

1. Each local school system shall secure in writing parental concurrence in the placement of or change in the educational assignment of handicapped children.
2. To accomplish this, local systems may involve parents in the assessment process but shall secure written parental confirmation of program assignment in a parent conference or other parent-school interaction.
3. When parents have not been involved in the assessment and placement process and have not provided written confirmation of the pupil assignment, the parent or guardian of a handicapped child shall be notified by certified mail, return receipt requested, of such recommended pupil placement or change in assignment.
4. The local school system may use the model letter of notification supplied by the State Department of Education or the local school system may draft its own notification to parents, but in any event, at least the same elements shall be included as in the State materials:
    (a) Name
    (b) Present educational assignment
    (c) Recommended assignment
    (d) Alternatives available
    (e) Reasons for recommended assignment

(f) Signature of authorized local school system placement official

(g) Description of parent or child's right to review of placement

(h) Form for consenting to educational program assignment or for requesting formal review of placement

5. If English is not the primary language of the parent or guardian, or if there is any other reason to believe that written notice of pupil placement recommendations may not be understood by the parent, the local school system shall take such steps to assure communication with the parents or guardians on this matter.

6. No new pupil assignment shall be made without parental consent except that failure to return the Parent Response Form will constitute a forfeit of the right to a review hearing and will signify acceptance of the recommendation of the school system. Such implied consent shall be used as a basis for placement only when written evidence is on file indicating that the parents have received and understood the notification.

SECTION I. Hearing Officer

I. Hearing Officer

  A. Qualifications

  B. Selection

  C. Training Outline

II. In-service Training

  A. Right to an Education

  B. Special Education

  C. The Hearing

  D. Transcript and Report

  E. Simulated Hearing

I. Hearing Officer

A. Qualifications of a Hearing Officer:

1. Be a resident of a school district in Tennessee other than the one in which the child resides and not be an employee of the one which the child attends
2. Be selected by the Right to Education Office, subject to confirmation by the State Commissioner of Education
3. Possess general qualities required to make fair decisions
4. Be knowledgeable and experienced in the field of special education
5. Be familiar with community resources and the services they offer, but shall not have been involved in the placement decision of the child.
6. Possess a minimum of a bachelor's degree with preference toward more training
7. Agree to complete the prescribed in-service training course for the hearing officer as developed by the Right to Education Office
8. Be available to travel within the geographic areas of the state
9. Be available to conduct hearings during the day or evening as the case might be, based upon the convenience of parents

B. Selection of a Hearing Officer:

1. The hearing officers will be selected by the Right to Education Office, in consultation with the Commissioner of Education. The final selection shall be subject to review and confirmation by the Commissioner.
2. The Right to Education Office may consult persons in other professional areas to identify individuals considered best qualified.
3. After the hearing officers are selected, an in-service training program consisting of a minimum of ten hours will be required before the person will actually conduct a hearing.

C. Training Outline for Hearing Officers:

The in-service program for hearing officers is of utmost importance. The program will involve the hearing officers and representatives from both the legal and educational professions. Because of the amount of material to be covered, the training will consist of a minimum of eight hours. A recommended outline

C. Training Outline for Hearing Officers: (continued)

and schedule for the in-service training of hearing officers is as follows:

1.	2 hour lecture	Right to Education	1. Legal basis 2. Court decisions 3. Legislation 4. Moral justification 5. School age 6. State Rules and Regulations
2.	2 hour discussion	What is Special Education?	1. Spectrum of disabiliti 2. Continuum of programs available
3.	2 hour lecture and discussion	The Hearing	1. Setting up a hearing 2. Arranging the room 3. Hearing procedures 4. Handling testimony
4.	2 hour lecture and discussion	Review of Transcript and Preparation of Report	1. Identification of fact 2. Forms 3. Guidelines for decisio- making 4. Justification of decisi
5.	2 hour lecture and discussion	Simulation of a Hearing	1. Simulated hearings 2. Questions and answers

II. In-service Training for Hearing Officers:

A. Right to an Education. The first two hours will be given in lecture format and will include six major areas.

1. Legal basis. Includes an explanation of the 5th and 14th amendments to the United States Constitution and the rights contained therein.

2. Court Precedents. Court suits relevant to Tennessee should be examined. What precipitated these suits, and what are the ramifications of a class action suit?

3. Legislation. This area will include an examination of Title VI, Civil Rights Act of 1964 and the Tennessee legislation concerning handicapped children. Optional discussion may include the manual, State Plan for Special Education, available from the Texas Education Agency, Austin, Texas; and legislation recently passed in Massachusetts, available from the State-Federal Information Clearinghouse, The Council for Exceptional Children, 1411 South Jefferson Davis Highway, Arlington, Virginia 22202.

4. Moral Justification. This discussion includes topics such as rights under a democracy, arbitrary setting of cut-off points, who makes the ultimate decisions to deny certain individuals their rights.

5. What is school age?

6. State Rules and Regulations

B. What is Special Education? Some of the hearing officers may have a limited background in special education. Others who are familiar with special education may not be aware of innovations in the field. In any event, several areas will be covered.

1. Spectrum of Disabilities. To provide a general knowledge of what constitutes a handicapping condition, and what are consequent limitations. The officers should also be provided with an idea of the scope of programs in the state and the state standards for special education. They must be made aware of the options available in providing special education services. These options fall within three categories: (a) modification of environment, (b) modification of process, and (c) modification of objectives.

2. Continuum of Programs Available

3. List of Suggested Readings.

Kirk, Samuel. Educating Exceptional Children. Houghton Mifflin Company, Boston, 1972. General textbook describing characteristics of disabilities and possible educational plans.

Tanner, Laurel and Lingren. Classroom Teaching and Learning. Holt, Rinehart and Winston, Inc., N.Y., 1971, Chapter 10, "Evaluation and Mental Health, Effect of the Learning Environment on the Child and How it may be Modified."

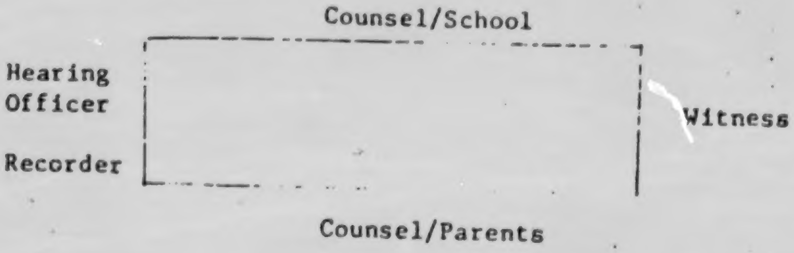
Telford, C. W. and J. M. Sawrey. The Exceptional Individual. Prentice Hall, Inc., Englewood Cliffs, N.J., 1972, Chapter 1, "Introduction to Exceptionality," explains effect of labeling and segregation.

Viscardi, H., Jr. But Not on Our Block. Paul S. Eriksson, Inc., N.Y., 1972. Successful programs for severely handicapped; how it feels to be handicapped.

C. The Hearing. This two-hour session will be spent in group discussion covering the hearing itself.

1. How is a Hearing Requested? This area of discussion will involve the complete process of requesting a hearing and the people involved. From the parents, the local school district, the Right to Education Office to the hearing officer.

2. How Should the Room be Arranged? Arrangements of the hearing room are important. By using a room with a conference table, the hearing can be kept informal, and all the participants can easily hear and see one another. For example:



3. What is a Proper Hearing Procedure? The hearing officer should introduce himself to everyone and suggest that the others do the same to ease tension.

The hearing officer should then make sure that the parents have been informed of and understand their rights. If the school district has in any way neglected this responsibility, the hearing should continue, but the negligence of the school district would be included as a part of the record.

The hearing officer should also explain that the hearing is being recorded and the right of the parties involved to a copy of the transcript of the hearing proceedings.

The hearing officer should then explain the general right to a hearing, the specific data supplied by the local school district concerning the case, and the procedures to be followed.

A representative for the local school district should then give a brief statement, supplying the background of the child and his program to date and support of their recommendation. After this, the school district should proceed with witnesses, followed by the parents and/or their representatives.

4. How is the Giving of Testimony Regulated? Should any mention be made in testimony of a test or report concerning the child, the hearing officer must ask that the entire report be entered into testimony. This avoids basing one's opinion on bits and pieces of information.

Some people testifying will have a tendency to become very emotional. The hearing officer should handle this with diplomacy. Remember that these individuals are deeply involved with the child, and it will be hard for them to separate emotion from fact.

When testimony is given, the hearing officer must be free to ask questions at any time. Since his decision must be based on testimony, he should have in his own mind a clear understanding of the problems involved. He should also raise questions to either party in order to clarify any doubt.

If either of the two parties objects continually to testimony, the hearing officer should inform each party of his right to discredit any testimony in cross-examination, but allow the witness to continue. Again, this requires diplomacy on the part of the hearing officer.

D. Review of Transcript and Preparation of Report. This two hour period will be devoted to the review of the transcript and the preparation of the final report at the completion of the hearing.

1. The period will include a discussion of the differences between legal fact and evidence. For instance, legal fact may include a violation on the part of the school district of the due process rights, while evidence may include an independent study of the child. Due process rights are of two kinds: (1) substantive--the right to free public special education services sufficient to meet the needs of handicapped children (TCA 49-2912); and (2) procedural--the right not to be arbitrarily assigned to or removed from a class without notice, reasons, and appeal (TCA 49-2947).

   Since the hearing officer operates in the procedural realm to effectuate substantive rights, he should not reverse a school system's placement merely because of a procedural failure on the part of the system, e.g., failing to adequately inform the parent of his right to inspect his child's records, etc. It would be not only futile insofar as the system is concerned, but damaging to the child for him to be placed by the hearing officer without a full examination of his substantive needs and merely because the system failed procedurally. Such a decision would, of itself, be arbitrary.

2. Report Form. Most hearing officers will find that they can write the decision much more easily if testimony follows the sequence of the report form designed by the state. A suggested flow of information is as follows:

   a. A statement of the purpose of the hearing

   b. A review of the facts introduced, school system first, then parents

   c. Points of contention considered, school, then parents

   d. A review of the evidence in relation to the items of contention. This in essence is the background material for the decision.

e. The conclusion or decision

f. Justification of decision

3. Guidelines for Decision-making. Although the hearing officer is usually asked to make his decision based on testimony presented, he should be able to come to a decision through a logical process.

   Remembering that the hearing officers are responsible for justification of their decisions, the individual educational programs they suggest for the child should be based on a knowledge of all phases of education. The same case may warrant two entirely different decisions rendered by two different hearing officers due to a lack of uniformity in training. It must be made clear to the hearing officers that they are responsible only to the child and should not compromise the child's educational needs because of a lack of programs.

   If the hearing officer feels that insufficient material precludes any decision-making, he may call an incomplete hearing and schedule a rehearing. He should indicate to both parties the type of information or materials he is lacking. With the agreement of the two parties in the hearing, the hearing officer may include the new material in making the final decision, but may not necessarily reschedule the hearing.

4. Appeals. Some time may be spent discussing how, and for what reasons, the parent may appeal the decision. All appeals are to the judiciary. There is no administrative review of the hearing officer's decision. Enforcement of the decision also rests with the courts (TCA 49-2947). The hearing officer should be aware of any procedural errors which may warrant an appeal and how to avoid these errors. A lawyer should also be available at the training session to inform the hearing officers of any liability they may face in committing procedural errors or in rendering unreasonable decisions.

E. Simulated Hearing. In the final two hours, the hearing officers will engage in simulation activities and questions and answers. Through a simulated hearing, final issues can be raised and questions can be answered.

At least twice a year a conference will be planned to bring the hearing officers together to discuss both unique and common problems and to modify guidelines applicable to the hearings.

SECTION II - DUE PROCESS HEARING

I. RESPONSIBILITIES

II. PROCEDURES

  A. Request for a Hearing

  B. Scheduling of a Hearing

  C. Location, Facilities and Expenses

  D. Preliminaries

  E. Objectives of the Hearing

  F. The Testimony

  G. The Decision

Due Process

I. Responsibilities

The State Department of Education recognizes that the education of a child is the responsibility of both the local school district and the parent or guardian of such a child. The provision of programs and adequate services requires a cooperative planning effort between the school and the parent or guardian and an acceptance of mutual responsibility for coordinating the implementation activities and tasks in the child's individual education plan. Every effort must be made by both parties to insure that the best possible educational programs and services are provided the child.

Since the executive officer of the local school district has the responsibility for local decisions, arrangements should be made through the local principal for the child, parent, or guardian to have a conference with the appropriate officer concerning the placement which the child, parent, or guardian feels to be inappropriate. If, however, agreement cannot be reached concerning such placement and a formal hearing is requested, the following review procedure shall be utilized.

II. Procedures

A. Request for a Hearing. A request for a hearing will be made in writing by the parent, child, or guardian to the superintendent of the local school district in which the child resides on the grounds that the child has been or is about to be: (TCA 49-2947)

1. Denied entry or continuance in a program of special education appropriate to his condition and needs
2. Placed in a special education program which is inappropriate to his condition and needs
3. Denied educational services because no suitable program of education or related services is maintained
4. Provided with special education or other education which is insufficient in quantity to satisfy the requirements of law
5. Provided with special education or other education to which he is entitled only by units of government or in situations which are not those having the primary responsibility for providing the services in question
6. Assigned to a program of special education when he is not handicapped

B. Scheduling of a Hearing.

1. The hearing will occur no less than fifteen (15) and no more than thirty (30) days from the receipt by the parent or guardian of the notice of placement (or request for hearing).

2. A request for a hearing shall stay the recommended placement until the results have been determined, unless the parent and the school district mutually agree to continue the placement. Any temporary agreements between the parent and school district will be in writing. TCA 49-2947 also provides that the placement may be made notwithstanding parental objections where there is a danger to health or safety.

3. Prior to the hearing, the parent or guardian, if he believes the diagnosis or evaluation of his child as shown in the records made available to him upon request to be in error, may request an independent examination and evaluation of the child and shall have the right to secure the same and to have the report thereof presented as evidence in the proceedings. If the parent or guardian is financially unable to afford an independent examination or evaluation, it will be provided at state expense.

4. The Superintendent, upon receipt of a request for a hearing, will contact the parent for the purpose of establishing a suitable time (morning, afternoon, or evening) and two possible dates for the hearing to be held.

5. The Superintendent will immediately notify the District Management Team office by phone to advise of the hearing request. The phone call will be followed with a letter to the District Office with a copy to be sent to the Right to Education Office, 116 Cordell Hull Building, Nashville 37219. The letter will confirm the hearing request, give the time and place for conducting the hearing, and list the two proposed dates.

6. Upon receipt of a phone call from the District Team Office advising the Right to Education Office of the request for a hearing, a Hearing Officer will be appointed. The Hearing Officer will select one of the proposed dates as determined by the parent and school district.

7. The Right to Education Office will notify the local school district Superintendent by phone, followed by letter to the Superintendent and the parent, confirming the appointment of a Hearing Officer, the time, place, and date the hearing will be conducted.

8. Care must be taken that everyone involved is aware of the appropriate date, time, and place and that everyone is informed of any changes made in the schedule.

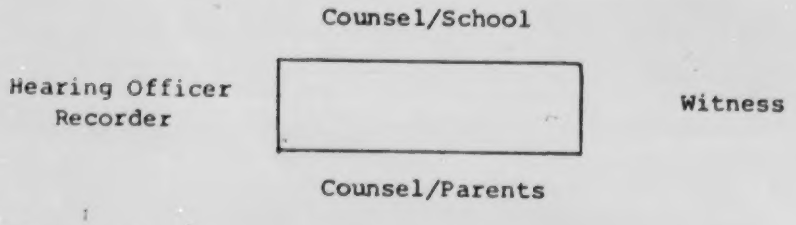
C. Location, Facilities, and Expense.

1. The hearing will be held in the school district in which the child resides and will be in the form of a conference between the parents, their representatives, the principal authors of the placement decision and a chairman who is the hearing officer, assigned by the Right to Education Office.

2. The local school district is responsible for providing an adequate meeting place, stenographic services and/or other transcribed record of the hearing proceedings.

3. The local school district will bear all the administrative cost of the entire hearing with the exception of the services of the hearing officer which will be assumed by the State Department of Education.

4. A meeting room with a conference table provides the best arrangement for the hearing in order that the proceedings can be kept informal and all participants can easily hear and see one another. A suggested arrangement for seating would be:



D. Preliminaries.

1. The school district will make available to the parent or guardian, any reports, records, clinical evaluation, or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination.

2. The parent or guardian is requested to inform the Superintendent of the local school district of the names of school personnel whom they request to participate in the hearing.

3. A copy of all evidence to be presented by either party in a hearing shall be provided the hearing officer at the time of presentation.

4. The hearing shall be an oral, personal hearing and shall be private unless the parent or guardian specifies a public hearing.

5. The hearing officer should explain the general right of parents to a review of placement hearing and the specific procedures to be followed in the hearing. If the school district in any way has neglected this responsibility, the hearing should continue, but the negligence of the school district would be included as part of the record.

6. The child and his parent or guardian will be entitled to appear in person, to examine and cross-examine witnesses, to introduce evidence, and to be represented by counsel.

7. The parent or guardian or his counsel shall have the right to compel the attendance of any witness and the production of evidence, and to cross-examine any witness testifying for the school district and any official, employee, or agent of the school district who may have evidence upon which the proposed action may be based. Requests for the attendance of witnesses shall be made to the hearing officer who shall certify such requests to the local board of education which shall issue subpoenas in the name of the State of Tennessee to compel the attendance of witnesses and the production of documentary evidence as authorized by TCA 49-1751.

8. The parent or guardian shall have the right to present evidence and testimony, including expert medical, psychological, sociological, or educational testimony.

9. The hearing officer should explain that the hearing is being recorded and the right of the parties involved to a copy of the transcript.

10. The hearing officer shall have the power to administer oaths or affirmations and shall keep order, receive documents, and in general, insure orderly proceedings.

E. Objectives of the Hearing. The hearing shall seek to establish any or all of the following:

1. That the child has needs which require special education, corrective, and/or supportive services

2. That the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree

3. That the diagnostic profile of the child on which the placement decision was based is substantially verified.

4. That the proposed placement is directly related to the child's educational needs and the objectives established and is sufficient in quality and quantity to satisfy such needs.

5. That the proposed program and services are to be provided at no expense to the child, parent, or guardian

6. That the child has been denied entry or continuance in a program of special education appropriate to his condition and needs.

7. That the services offered the child be comparable to those offered a child who does not have a handicap.

F. The Testimony.

1. Representatives of the school shall first present their findings and the reason for the proposed placement or denial of placement. This presentation may include verbal reports, the written record of the multidisciplinary conference at which the child's individual educational plan was developed, and any other information deemed relevant. The parents and/or their representatives may question school personnel about the information which has been presented. The rules of evidence applicable in a court will not apply to the hearing; and the hearing officer will admit all evidence he deems material, competent, relevant, and not unduly repetitious.

   Incompetent evidence: that which may not be admitted because of some defect in the evidence or the witness, e.g., any evidence which is "privileged" under the rules of law.

   Immaterial evidence: that which, while relevant, is not decisive or controlling, or which is of no substantial value in proving the point.

   Irrelevant evidence: that which has no bearing on the issue, is inapplicable or impertinent to the matter under consideration.

   Repetitious evidence: that which seeks to establish a fact that has been already established by previous testimony.

2. Should mention be made in testimony of a test or report done on the child, the hearing officer must ask that the entire report be entered into testimony. This avoids basing one's opinion on bits and pieces of information. Extracts may be taken from bulky reports provided that all information concerning the child is included.

3. As testimony is given, the hearing officer must be free to ask questions any time. Since his decision must be based

on testimony, he should have in his own mind a clear understanding of the problems involved. He should also raise questions to either party in order to clarify any doubt.

4. Should either party object to testimony, the hearing officer should inform the party of his right to discredit any testimony in cross-examination, but all testimony should be admitted that meets the test of Number 1 above. Again, this requires diplomacy on the part of the hearing officer.

5. The parents and their representatives may then present appropriate witnesses, reports of tests made, and other facts. School district personnel may subsequently question the information presented by the parents and their representatives.

G. The Decision.

1. After considering the facts as presented at the hearing, the hearing officer shall rule upon the issues. His decision shall be an affirmance of the placement decision, a denial of the decision of placement, or a recommendation for alternative procedures to meet the educational needs of the child, which may include further evaluation.

2. The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

3. If the hearing officer feels that insufficient material precludes any decision making, he may continue the hearing or reschedule it to any convenient time within the limitations of B. 1, above. He should in this case indicate to both parties the type of information or materials he is lacking. He may, if the parties so stipulate, request additional written evidence or briefs, prior to rendering his decision.

4. A decision rendered by the hearing officer will be communicated to the parents or guardian by certified mail within four (4) days of the completion of the hearing or the receipt of final briefs. The letter will include the reasons for the decision.

5. The determination of a hearing officer shall be subject to judicial review in the manner provided for judicial review of other matters of the local school district.

6. Should a determination of a hearing officer not be fully complied with or implemented, the aggrieved party may enforce it by proceeding in the chancery or circuit court.

7. The remedies herein provided are in addition to any other remedies which a child, his parent, or guardian may otherwise have pursuant to law.

Guidelines for Contractual Agreements with State-operated or Private Agencies

If a child exhibits handicapping characteristics which are determined in a multidisciplinary staff conference to be so profound, complex, or otherwise unique that no special education program offered by the local school system can adequately or appropriately meet his needs, he shall be referred to either a state-operated or a private facility.

The availability of community resources as an extension of the public school education program in no way relieves the local system, special education services association, or special school of its responsibility to provide a comprehensive program of special education.

The school system shall be responsible for assisting the parents in locating an appropriate state-operated or private program and for facilitating the referral to that program. An appropriate program is one which will provide the child with special education experiences which are both adequate and appropriate to his needs.

When a private facility is utilized, the local school system shall be responsible for payment of tuition and provision of transportation as provided by law.

1. Provision for all private placements shall be included in the school system's plan for services to handicapped children.
2. Approval of the recommended placement shall be contingent upon the following criteria:
    a. The child is enrolled in the public school.
    b. The local special education program is in compliance with Tennessee Code Annotated 49-2912--49-2959.
    c. The facility's program is appropriate in relation to the needs of the individual child.

d. The facility is licensed by the appropriate agency of the state in which the facility is located.

e. The facility is registered with the Office of the Commissioner and meets the standards established by the Office of the Commissioner.

f. The facility is within the United States.

g. The facility provides an educational program for at least 175 days per year.

3. A school system, special education services association, or special school which has been denied approval for the placement of a child in a private facility cannot independently place the child and provide the tuition.

All private facility placements shall be reapproved by the Office of the Commissioner on an annual basis.

Private school placement. If the recommended private school placement is approved, the local school system, special education services association, or special school and the private facility shall enter into an agreement utilizing a format provided by the Office of the Commissioner. The agreement shall provide for, but not be limited to:

1. A description of the educational program to be provided, including the educational objectives to be met and how they are to be met
2. The tuition cost
3. Periodic progress reports on the child from the private facility, to be submitted at least annually
4. Acceptance that the special education staff of the placing agency may inspect the private facility and confer with the staff at reasonable times.

The local school system, special education services association, or special school shall maintain a record of supportive data on each child placed in a private facility. This data shall include:

1. A summary of the child's individual problem
2. A description of the program required by the child
3. An explanation of why the child's needs cannot be met by the public school program
4. The description of the special education program to be offered by the private facility
5. The request for placement of the child in a private facility as approved by the State Department of Education
6. Copy of the agreement with the facility
7. Conference reports and periodic progress reports submitted by the private facility
8. An annual reassessment of the need for continued private placement.

State-operated day program placement. When a state-operated day placement is utilized, the local school system shall provide transportation for the children in this program. Other services may be provided as mutually agreed between the school system, special education services association, and the state-operated facility.

The local school system and special education services association shall be expected to follow the progress of those children placed in a state-operated or private program. Public school personnel shall confer with the private or state facility personnel to evaluate the child's progress and, as appropriate, facilitate the child's return to the public school program.

Guidelines for Personnel Preparation

Preparation of Personnel

The Mandatory Education of the Handicapped Act requires the local school system to provide the special skills and expertise to meet the needs of all children and youth with handicapping conditions. In preparing its staff to meet this requirement, the school system has several options to follow:

1. Employ personnel who possess the needed skills
2. Identify and use qualified in-house personnel to teach teachers, other professionals, and paraprofessionals
3. Use of consultants
4. Award training grants to staff
5. Contract with approved institutions of higher education to provide short-term and/or long-term programming
6. Retrain regular educators to meet certification requirements in special education

Recruitment

To interest potential professionals and support personnel in careers of service to children and youth with handicapping conditions, an active continuing recruitment program is necessary and crucial. The local school system has several options to follow in the recruitment of personnel:

1. Local school systems may attempt to identify existing faculty who may express an interest in becoming special educators.

2. Local school systems may award an education grant for either part-time or full-time study with major emphasis in special education.

3. Local school systems may communicate employment information to institutions of higher education in order to recruit new graduates into the local system.

4. Local school systems may arrange for a spring recruitment period at institutions of higher education which are graduating students from approved programs.

In-service Education

Local school systems should individually or cooperatively plan in-service training programs concerned with the observation, identification, utilization, and evaluation of classroom methods for educating children and youth with handicapping conditions. These instructional techniques should make provisions for children in all educational levels and environments. Each local school system should schedule a sufficient amount of in-service education which focuses on special, corrective, and supportive educational services to handicapped children and youth. A comprehensive in-service education program might include, but not be limited to the following personnel:

1. Administrative: including superintendents, supervisors, principals, and school board members.
2. Instructional: including regular, consulting special, and resource teachers.
3. Supportive Services: including school nurses, guidance counselors, school psychologists, social workers, and attendance teachers.

4. Essential Services: including clerical, transportation, food, and maintenance.

Local school systems shall provide for, but not be limited to, the following components which are to be utilized by regular, special, supportive, and corrective services:

1. Sensitivity and awareness of the provisions of the Mandatory Education of the Handicapped Act.
2. Recognition of classroom manifestations of various handicapping conditions including:
    a. Intellectual Handicaps
    b. Behavior Disorders
    c. Physical Handicaps
    d. Hearing Problems
    e. Vision Problems
    f. Learning Disorders
    g. Multiple manifestations of these difficulties
    h. Gifted
3. History, rationale, and procedures used for maintaining exceptional and handicapped children within a regular classroom.
4. Referral of children for further evaluation by various clinical specialities.
5. Introduction to both psychometric and direct observational procedures to be used in screening for handicapping conditions.
6. Introduction to methods and materials for individualized academic programming using an individual child's group test results as academic diagnostic information.
7. Training procedures for better utilization of paraprofessionals.

8. General intervention procedures including special equipment and ways of using and obtaining those materials. Intervention procedures should include not only interventions with children, but also the use of parents and community resources in behaviorally-based intervention programs. Principles of parent interviewing and counseling should also be considered for in-service education activities.

Local school systems shall focus on, but not be limited to, the following in-service education components which will be utilized by administrative and supervisory personnel:

1. Sensitivity and awareness of the provisions of the Mandatory Education of the Handicapped Act.
2. Interpretation of State policies regarding the education of all children.
3. Issues confronting special education:
    a. Alternatives for providing services to handicapped children
    b. Identification procedures
    c. Placement procedures
    d. Curriculum
    e. Financial procedures
    f. Evaluation
    g. Parent-school communication

Evaluation

Local school systems shall annually evaluate their techniques of preparation, recruitment, and in-service education for possible modification when indicated.

Guidelines for Providing Special Transportation Services

The local school system shall develop a cost-effective plan for providing transportation to each handicapped child requiring special transportation residing within the district. The determination of the individual children to be served and the specific type of special transportation needed shall be made by a multidisciplinary team at the local level. The plan shall incorporate the following requirements:

1. When possible, regular transportation facilities shall be utilized to serve children requiring special transportation. To the maximum extent practicable, handicapped children should be provided services along with children who do not have handicaps. Impediments to normal functioning of handicapped children in the regular transportation program shall be overcome by the adaptation of the regular program and facilities to meet the needs of the handicapped rather than by separate transportation.
2. Travel time for handicapped children should not exceed the travel time for regular students. Exceptions may be made on the recommendations of the multidisciplinary team.
3. Vehicles must meet the requirements specified in Rules, Regulations, and Minimum Standards, Tennessee State Board of Education, Nashville, Tennessee.
4. Operators and attendants of vehicles providing special transportation shall be given special training concerned with the needs and special requirements of handicapped children.

5. Special attendants shall be provided when in the opinion of the local school system team such services are necessary.

6. Contracting for special transportation is permissible provided the operators, attendants, and vehicles meet minimum requirements as established by the State Board of Education. (See 3 above.)

GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES TO MAKE THEM ACCESSIBLE TO AND USABLE BY, THE PHYSICALLY HANDICAPPED

EXTERIOR

Site

The grading and preparation of the site should be such that it attains a level with a normal entrance to the building when possible.

Ramps

A ramp should be provided if there is a change of level from the walkway or parking lot to the building.

The ramp should include:

Level approach minimum of 6' long.

Non-skid surface, minimum of 32" wide if for wheelchair traffic only, otherwise, the ramp should be the same width as the entry way.

Rest platform a minimum of 4'6" every 30'.

Slope no greater than 1:12 or 8.33%.

Handrails on one side, preferably two, 32" high measured from the surface and extending one foot beyond the top and bottom of the ramp.

A 5' X 5' level platform at the top if a door swings out onto the platform.

Ramps exposed to the elements should be protected by a canopy, or equipped to melt ice and snow.

Walks

There should be at least one entrance without steps providing access to the facility and including the following:

Slope or gradient no greater than 5%. (5% gradients must have level rest areas every 60').

Non-slip surface minimum of 48" wide.

Wherever wlaks intersect other walks, ramps, or driveways, they should blend to a common level.

A walk should have a level platform 5' X 5' if a door swings out onto the platform.

Gratings, man-holes, and similar obstructions should not be located in the walk surface.

Parking lots

Special parking for the disabled should be located as near as possible to the facility served.

Three to five percent of the parking bays should be reserved for disabled persons and identified and marked as such.

The bay should be a minimum of 10' wide with a 2' aisle between every 2 spaces.

The area designated for the disabled should be designed so that movement behind cars or across lanes of traffic is not necessary.

Ramps should be provided if there is a level change from the parking lot to the adjoining walk.

Curbs

At pedestrian crossings, the pedestrian and vehicular surfaces should be blended to a common level by curbing.

The curb should be flush with the adjacent roadway surface.

For identification, curb should be of a color contrasting with the adjacent surface. For the blind, it is advantageous if the ramp and curb have a distinguising surface texture (e.g., patterned or coarse finish).

INTERIOR

General Considerations

Entrances

At least one primary entrance to each building shall be usable by individuals in wheelchairs, on crutches or wearing braces.

This entrance should be on a level to make elevators accessible.

Doors

Minimum of 34" wide clear opening in the doorway.

Threshold, flush if possible, but no greater than 3/4", no vertical rise more than ¼".

Floor should be level, for 5' in both sides of the door opening.

Kick plates at least 16" high of material or finish to withstand the abuse of crutches, wheelchairs, canes, etc.

Distance between 2 doors (inner and outer) of a vestibule must be a minimum of 6'6" to insure that a wheelchair cannot be trapped between the two.

Handles should not be more than 3'6" from the floors. Horizontal lever handles are preferred. Handles on doors opening to danger areas (e.g. boiler rooms, loading platforms, stairwells) should be knurled to serve as a warning of danger for the visually handicapped.

All double acting doors should have viewing panels with the lower edge 3' from the floor.

Doors with large areas of glass should have marking to avoid accidents.

Force required to open the door should not exceed 8 lbs.

If automatic door closers are used, a 10-12 second time delay should be provided.

Corridors

Corridor must be a minimum of 6 feet wide.

Low hanging or projecting fixtures (door closers, fire extinguishers, ceiling lights. exit signs, water fountains, etc.) are a hazard to the visually handicapped and should be avoided. (Minimum of 7' is recommended.)

Floors should have non-slip surfaces.

Floors on a given story should be of common level, or connected by a ramp.

Stairs

Risers should not exceed 7" and have no projecting nosings.

Hand rails should be 32" above the surface. They should be uninterrupted for the full length of the stairs and extend 12" beyond the top and bottom step. This extension should not become a hazard itself.

Landings and floor levels should be distinguished from stairs by contrasting color or texture.

All stairways should have a minimum of 30 footcandles of illumination. Handrail diameter whether circular or oval should be 1½"-2".

Studs or markings on the rail's inner surface assist the blind in becoming aware of the presence of landings or the end of the stairs. Care should be taken to ensure that the studs do not become a hazard.

Elevators

Elevators should be provided in multi-story buildings where access to floors other than the entrance level cannot be reached by ramp or walk.

Cab-size should be a minimum of 5'1" X 5'6" wide.

No control should be more than 48 inches from the floor.

Heat sensitive controls should not be used.

Doors should have a sensitive safety edge and/or a sensing device to prevent closing when entering or exiting.

On opening, the doors should remain open 10-12 seconds.

Closing should be 3-3½ seconds.

Horizontal rails 32" from the floor should be provided.

The interior surface should be of a material resistant to marring by wheelchairs, crutches, braces, etc.

Elevators should be automatically operated and stop precisely at the floor level.

Drinking Fountains

Drinking Fountains should be set in a recessed area no less than 30 inches wide.

The upper edge should not be more than 34 inches above the floor level.

Controls and spouts should be located up front and both hand and foot operated.

Electrical and Mechanical

Controls for light, fire alarms, and similar devices should be accessible to, and usable by, the handicapped.

In areas to be utilized by the handicapped the electrical outlets should be no less than 18" from the floor.

Controls and switches should be no more than 48 inches above the floor.

Switches should have no more than two switches per plate.

Identification

Raised letters or numbers should be used to identify rooms. The plaque should be located on the wall on the handle side of the door.

Markings should be 54"-66" (preferably 60") from the floor.

Warning Signals

Both visual (blinking lights) and audible (horns, bells, etc.) warning signals should be provided throughout the facility.

Telephones

Adequate telephone service should be provided for the handicapped.

Telephones should be wall mounted with no legs or enclosure to prohibit access. Underside clearance should be at least 30".

Dial should be push button and no more than 39" from the floor.

Coin slot should be no more than 48" from the floor.

Volume control or amplifier should be incorporated whenever possible on these phones.

Sanitary Facilities

Toilet Stall

The sanitary facilities should include one toilet stall that:

is 42 inches wide and a minimum of 60 inches deep

has an outswinging stall door that provides at least 32 inches clear space in the door opening.

has a toilet seat 19"-20" above the floor.

has handrails on each side 33 inches high, parallel to the floor, 1½" in diameter, with 1½" clearance between the wall and the rail, and fastened securely at the ends and the center.

Urinals

Wall urinals mounted so that the front rim of the bowl is not more than 19" from the floor are preferred rather than the stall urinals.

A manual flush system installed no more than 40 inches from the floor should be utilized.

Sinks

The lavatory basin should be wall hung, or contained in a counter top with a minimum of 29 inches of clear space between the sink or counter apron and the floor.

Drain pipes and hot water pipes under the lavatory should be insulated to protect the user.

Self-closing faucets should not be used. Faucet handles should be lever type and should clear the adjacent wall by 1½".

Hot water faucet on the left and cold on the right should be standard.

Mirrors and shelves should be provided at a height as low as possible, and no higher than 40" from the floor measured from the top of the shelf and the bottom of the mirror. A full length mirror starting 2' from the floor is desirable.

Towel racks, towel dispensers, soap dispensers, etc. should be mounted no more than 40" from the floor.

Fire Protection and Safety

Buildings accessible to the handicapped should be identified and marked at all entrances.

The areas of refuge should be located away from high potential fire sources.

This space should be located out of the main traffic circulation patterns and equipped with a separate alarm system to indicate the presence of a handicapped person.

Fire extinguishers and alarm boxes should be located throughout the facility at a height no greater than 48 inches.

Automatic fire doors should be equipped with electro-magnetic smoke-and-heat sensitive door holders.

Special Areas

Auditoriums

A reserved area or areas equal to one percent of the seating capacity should be planned to allow chairbound people to remain in their wheelchairs.

The space provided for each chair should be 4'9 X 3'0".

Flexible space should be provided in order that stacking chairs be used to seat able bodied persons accompanying the chairbound person.

Care must be exercised so that the view of those people seated behind is not obstructed.

Consideration must be given to arrangements made for the chairbound so as to minimize obstruction of possible escape routes.

Provisions should be made that earphones can be plugged into sound amplifying equipment, or the facility should be frequency modulated and induction coil looped so that the hard of hearing may benefit from the improved reception.

Cafeterias/Dining Halls

The Handicapped should be able to obtain food without special services, segregated facilities or the necessity of traveling through the kitchen area.

The serving tray slide can be the conventional height of 34".

Should a control railing exist, there should be a 34" space between the rail and the serving tray slide.

Self-service beverage of water faucets should be of the type permitting the glass to rest on the counter while being filled.

Dining tables should have a 30" clearance from the underside of the table top to the floor.

Classrooms

A minimum of 70 footcandles of illumination should be provided. With supplemental task lighting available when required.

F. M. or induction coil loop for the hard of hearing should be provided.

Both audible and visual signals in the rooms should be provided.

Acoustic control by using carpet and/or ceiling tile is essential.

A diagnostic and testing room of approximately 400 square feet should be available in the facility. This space should be acoustically treated and illuminated to 70 footcandles.

Gymnasiums and Physical Education

Spaces should be provided in a gym for modified or adapted physical education activities. These adaptations are mostly of degree of involvement rather than type of activity. Modified equipment will normally be usable in the Gymnasium utilizing the existing facilities.

Swimming Pool

A flush-deck pool should be utilized.

Access should be provided to the pool by means of steps with handrails, or a sloping ramp.

The pool deck surface should be of a non-slip material.

The dressing room should have an aisle area a minimum of 60" wide.

Sanitary Facilities (each sex)

At least one toilet stall, lavatory and accessory cluster should meet the requirements previously established for a restroom to accommodate the disabled.

Shower

Every shower room should contain 2 specially designed shower cubicles. One with a seat on the left cubicle wall, the other with the seat on the right. The seat should be opposite the shower head.

The shower seat height should be equal to the height of the wheelchair seat when the chair is outside of the shower cubicle.

The shower seat should be 14 inches wide, extend the full 3 foot wall length of the shower cubicle and turn the corner for at least 8 inches. The seat should be designed to fold back against the wall when not in use.

The cubicle should be 3'0" X 3'0", suitably drained, and have a non-slip floor.

The splash curb at the threshold should not exceed 2" in height.

A horizontal rail or grab bar circling the cubicle and securely attached to the cubicle wall so that it is 33 inches above the floor is desirable.

Wrist-lever type handles for water control should be used.

Soap tray should be no more than 40" from the floor.

Vans and Compact Buses

Appropriately engineered Vans and compact buses with open interiors have been found to be an efficient means of facilitating the transporting of those in wheelchairs and those who have difficulty in boarding regular vehicles.

Double doors on the side and rear of the van providing an unobstructed entrance at least 48 inches wide should be utilized.

The Van should be equipped with hydraulic lift having a platform a minimum of 33 X 51 inches, lift capacity of 700 pounds, and having a tapered front edge on the lift platform.

Wheelchair patients should be transported while seated in their chairs. Seating for them should be arranged so that they face the front of the Van.

The water temperature must be thermostatically controlled to a temperature at the supply point of 110° - 120°, giving a temperature at the delivery point of approximately 105°. An alternate method of preventing injury would be to install anti-scald valves on these showers.

Laboratories

At least one student station should be designed to accommodate the handicapped. (Assuming 25 stations per lab)

The underside of the work surface must be clear 30" from the floor and 18" deep, with a width for knee space of 30".

Faucets and outlets at these stations should be side-mounted rather than rear-mounted.

A slightly larger than normal lever-type handle for the water and gas faucets should be provided.

Aisles should be a minimum of 36" wide and clear of obstructions.

Libraries

The aisle between the stacks should be 4' wide.

One percent of the study carrels should be accessible to the handicapped.

Tables and study carrels should have a minimum of 30" clear space between the underside of the work surface and the floor.

Provision should be made for soundproof booths or study carrels where the blind and hard of hearing may use tape recorders, A.V. equipment, etc.

Bookshelves commonly used by the student body must not be higher than 6'0 or lower than 9" above floor level. Preferred levels are not higher than 5'9 or lower than 1'3".

Card catalogues and dictionary stands should be on bases 30" from the floor.

Transportation

Buses

School buses are satisfactory for transporting some ambulatory or semi-ambulatory persons.

TEXAS

ATTACHMENT 4-4

Texas Education Agency

- STATE BOARD OF EDUCATION
- STATE COMMISSIONER OF EDUCATION
- STATE DEPARTMENT OF EDUCATION

201 East Eleventh Street
Austin, Texas
78701

Policy Change Notice No. 9
(Replaces Policy Mem

TO: THE SCHOOL OFFICIAL ADDRESSED

FROM: Robert A. Montgomery Robert A. Montgomery
Assistant Deputy Commissioner
for Programs and Personnel Development

DATE: May 15, 1975

SUBJECT: Policy Changes in Administrative Guide and Handbook for Special Education, Bulletin 711, March 1973 Revised, Effective August 1, 1975 (1975-76 School Year)

The following policy change was adopted by the State Board of Education on Saturday, May 10, 1975. (This Policy Change Notice also replaces Policy Memorandum No. 2, "Implementation of Section 21.911, Texas Education Code, Relating to the Testing of Students for Placement in Special Education Classes," dated December 1, 1973.)

Administrative Guide and Handbook for Special Education

2.5 Pupil Placement in Special Education Services (page 12)

Each school district shall adopt policies to implement a plan for counseling parents or guardians of pupils who are considered in any way for special education services. The plan shall include notice to parents of any referrals or screening; permission from parents for comprehensive assessment or consideration of placement; the parents' right to examine and question any information, records, or data regarding the pupil; and a procedure for appeals and hearings should disagreements arise over the educational placement of the pupil. Communication with the parents or guardians, verbal or written, shall be in the language best understood by the parents or guardians.

A pupil appraisal process shall be established by each school district. This shall be an orderly and systematic process which includes pupil referral and screening, comprehensive assessment, educational planning and placement of the pupils and dissemination of the educational plan to appropriate personnel and evaluation of pupil data for purposes of revising the plan.

(OVER)

"An Equal Opportunity Employer"

Any pupil considered for or provided special education services shall be tested or otherwise appraised in the pupil's primary home language, the pupil's most fluent language, the language in which the pupil has the best speaking ability, and the language the pupil has the best capacity for understanding when pupil verbal or non-verbal responses are necessary for appraisal as required by Section 21.911, Texas Education Code.

The Commissioner of Education shall provide the school districts a list of tests approved by the State Board of Education.

Each school district shall establish at least one committee for the screening, placement, review, and dismissal of pupils considered for and receiving special education services. Additional Admission, Review, and Dismissal Committees may be established as necessary for the operation of the local program.

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a. School District Plan for Counseling Parents or Guardians

In working with parents or guardians of exceptional children, each school district has a plan in operation which provides the following components:

- Notification to parents or guardians is made of screening or referral activities which include their children.
- Permission is secured before comprehensive assessment or consideration for placement in special education services and parent or guardian approval is secured for release of relevant information from various diagnostic sources to the school for educational purposes.
- All school records, other information and data regarding their children are made available to parents or guardians. Parent or guardian approval for use of pupil information by other schools and agencies is secured before the information is released.
- Grievances relating to special education services are to be dealt with according to State Board of Education Policy and Administrative Procedure Series 7100, Hearings and Appeals.
- Parents and guardians will be advised of this plan. Communications, both written and verbal, will be in the language best understood by the parents or guardians.

Tex

CHAPTER 7. RELATIONSHIPS WITH THE PUBLIC, OTHER AGENCIES, AND INSTITUTIONS

SERIES 7100 HEARINGS AND APPEALS

7101 Hearings and Appeals Generally

7102 Hearings

7102.1 Before Local Governing Boards and Trustees

Local governing boards and trustees shall adopt written procedures providing for orderly hearings and appeals of aggrieved parties including the following:

(1) In grievances or controversies involving administrative actions or problems of school districts, aggrieved parties should be afforded a full hearing, as prescribed in Policy 7102.3, before the board of trustees of the district provided request in writing has been timely filed by aggrieved party or parties as prescribed in Policy 7102.3.

(2) The procedures for local hearings and appeals as prescribed in Chapter 13, Subchapter C, Texas Education Code, apply to appeals involving teacher contracts only in those school districts which have adopted the provisions of the probationary or continuing contract laws and contract their teachers as prescribed in Chapter 13, Subchapter C of the Texas Education Code.

(3) In controversies involving original administrative actions under the jurisdiction of the county superintendent, aggrieved parties are afforded the same type of hearing, where timely requested in writing, before the county superintendent, as prescribed in Policy 7102.3.

(4) In controversies involving original administrative actions under the jurisdiction of the county school trustees, aggrieved parties are afforded the same type of hearing before the county school trustees in the manner and under the conditions prescribed in Policy 7102.3.

(5) Where hearings have been locally afforded and held as recommended in this administrative procedure, no matter involved therein is heard by the Commissioner of Education except after timely appeals have been taken as provided by these administrative procedures.

7102.2 Before the Commissioner of Education and the State Board of Education

In any controversy arising under the provisions of the Texas Public School Laws in which the Commissioner of Education has original administrative jurisdiction, aggrieved parties are entitled to a hearing before the Commissioner. At the hearing, parties are entitled to appear and/or be represented by counsel of their choice and to present sworn testimony.

Hearings

7102.2 Before the Commissioner of Education and the State Board of Education (continued)

In any controversy involving decisions of the Commissioner of Education, other than appellate decisions (Administrative Procedures 7103.2 and 7103.3), and including decisions rendered after a hearing as provided in this series, the aggrieved parties are entitled to a hearing before the State Board of Education, at which hearing the parties are entitled to appear and/or be represented by counsel of their choice, provided, however, that all testimony and evidence pertaining to the controversy is fully completed on a hearing before the Commissioner of Education, or before someone designated by the Commissioner to hear the testimony and evidence, for the purpose of preparing a record as prescribed in Policy 7102.3. (Textbook Protest, Complaints, and Hearings, Policy 3334.6)

7102.3 Procedural Requirements

CHAPTER 7. RELATIONSHIPS WITH THE PUBLIC, OTHER AGENCIES, AND INSTITUTIONS

SERIES 7100 HEARINGS AND APPEALS

7103 Appeals

7103.1 Provision for Appeal

7103.2 Route of Appeal

For all common school districts, rural high school districts, and independent school districts with fewer than 500 scholastics, the proper route of appeal is:

(1) from a district board of trustees to the county superintendent;

(2) from the county superintendent to the county school trustees;

(3) from the county school trustees to either:

  (1-1) the Commissioner of Education; or

  (1-2) any court having proper jurisdiction of the subject matter;

(4) from the Commissioner of Education to the State Board of Education; and

(5) from the State Board of Education to a court of competent jurisdiction.

For all independent school districts with 500 or more scholastics, the proper route of appeal is:

(a) from a district board of trustees to the Commissioner of Education;

(b) from the Commissioner of Education to the State Board of Education; and

(c) from the State Board of Education to a court of competent jurisdiction.

(Request for Reporting a Court Decision Following a Hearing, Policy 7107)

7103.3 Procedure for Appeal

7103.4 Record of Appeal

7103.5 Testimony and Evidence

7103.6 Rendering a Decision

Where any board or officer has refused to afford any aggrieved party a hearing as recommended in Policy 7102, the aggrieved party or parties may appeal from the action, locally administrative or appellate, as provided in this administrative procedure.

ppeals

.6 Rendering a Decision (continued)

here an appeal is heard before the State Board of Education, the ommissioner of Education sends the applicable excerpts of the inutes and certifies the decision of the Board.

.7 Rehearings and Subsequent Remedies

RULES AND REGULATIONS
FOR PROGRAMS FOR THE HANDICAPPED

OFFICE OF UTAH STATE BOARD OF EDUCATION

Walter D. Talbot
State Superintendent of Public Instruction

Lerue Winget
Deputy Superintendent for Instruction

DIVISION OF STAFF DEVELOPMENT

Vere A. McHenry, Administrator

R. Elwood Pace
Coordinator, Special Education Programs

Salt Lake City, Utah
December 19, 1975

Adopted by the
UTAH STATE BOARD OF EDUCATION
July 1, 1974
(Revised December 19, 1975)

UTAH STATE BOARD OF EDUCATION
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Walter D. Talbot, Executive Officer
Salt Lake City, Utah

LaPreal W. Lublin, Secretary
Salt Lake City, Utah

FOREWORD

The new Utah School Finance Law requires that the State Board of Education provide standards for identifying handicapped persons, diagnosing their needs, and assisting school districts in prescribing the type of programs and services needed for each person. Careful review and programmatic implementation of these revised standards should help those responsible to bring greater quality to the excellent programs presently sponsored by local districts.

Utah is a leader among her sister states in the percentage of her handicapped persons receiving special education services. Nevertheless, while districts are claiming reimbursement for as many as eighty percent of the target handicapped population, many being served are not properly programmed for service. Also, there are many students with special needs who fall outside of the standards for handicapped persons. Other resource programs and strategies need to be established for such persons who do not meet the official standards found in these Rules and Regulations.

As educators and parents strive for a more appropriate educational program for all handicapped persons through greater cooperation with General Education in a "mainstreaming" effort for the mildly handicapped, local Special Education programs should give a high priority to serving within each category, the most severely handicapped first within funds available.

Over service in the area of Learning Disabilities is of serious concern. Prevalence limits stated in these Rules and Regulations should largely be considered as maximums, even though provision is made to exceed the prevalence stated through proper justification. P.L. 94-142, recently passed federal educational aid for the handicapped, limits service for persons who are labeled Learning Disabled at the two percent level. The Bureau for Education for the Handicapped is currently recommending three percent. In keeping with the findings of the "Project Identification" team, the Utah State Board of Education has approved the prevalence of Learning Disabled persons at the five percent level. While this exceeds the national posture, it is based upon a rather thorough study that justifies the increase and also sets a functional ceiling.

Walter Talbot

Walter D. Talbot
State Superintendent
of Public Instruction

Reevaluation of placement and individualized education program should occur periodically throughout the school year and not less frequently than once each year for every handicapped person being served.

5. Definition of Handicapped:

Programs will be for persons falling within the following definition of handicapped:

> The handicapped person is defined as the person who deviates from the average or normal person (1) in mental characteristics, (2) in sensory abilities, (3) in neuromuscular or physical characteristics, (4) in social or emotional behavior, (5) in learning and communication abilities, or (6) in multiple handicaps to such an extent that he requires a modification of school practices, or special educational services in order to develop to his maximum capacity. (See Appendix I, page 7) for definitions by category, criteria, appropriate procedures and tests.)

6. The total estimated number of pupils to be served under all service patterns should not exceed the percentages of total district population listed for each handicap on the following chart. (Before the percentages listed in the following table can be exceeded, approval must be given based on justification submitted in writing.)

Category	Prevalence
Educable Mentally Retarded	.02
Trainable Mentally Retarded, Severely Multiple Handicapped & Deaf/Blind (including Training Center Program)	.006
Learning Disabled	.05
Emotionally Handicapped	.05
Deaf	.0008
Hard-of-Hearing	.005
Speech/Hearing	.035
Physical Handicapped (Motor Handicapped) and Other Health Impaired (OHI)	.005
Visually Impaired	.001
TOTAL:	.1728
Homebound & Hospitalized Handicapped (Permanent and Temporary)	.0029*

*Does not increase prevalence total

7. Maximum Pupil-Teacher Ratio for Service Patterns:

Maximum pupil-teacher ratios set for each service pattern are considered critical to provide a quality program. Approval to exceed the maximum pupil-teacher ratios stated may be given subject to justification submitted in writing. (See Table B, page 6)

8. Teachers serving in a self-contained service pattern must be certificated in the category to which they are assigned. (See Tabel B, Column A-1, page 6)

Teachers serving in a resource program providing service for a single handicap must be certificated for the category to be served. (See Table B, Column B-4, page 6). Teachers serving in a resource program providing service to pupils who are mildly handicapped from two or more categories who hold certificates in any of four areas - Intellectually Handicapped, Emotionally Handicapped, Learning Disabled, or Speech Handicapped - are considered to be properly certificated. (See Table B, Column B-5, page 6). Districts shall carefully assess the compentencies of the teacher before assignment is made to this service pattern.

9. Provision for Supervision:

Districts shall provide appropriate and specific full-time or percent of FTE supervision or coordination of special education programs. Supervision may be provided within the district, on a multi-district or regional basis or on a contracted arrangement. Adequacy and appropriateness of personnel assigned will be assessed by the State Board of Education.

10. Provision for Identification and Diagnosis:

Districts shall provide appropriate and specific indentification and diagnostic services. District plans, procedures, and budgeting for identification and diagnosis of the handicapped will be assessed as to adequacy and appropriateness.

11. Annual Program Plan:

A statement of program plans shall be provided to the State Board of Education annually outlining the following:

a. Objectives of the program
b. Activities to meet the objectives
c. Evaluation procedures to show how the district plans to determine the effectiveness of the programs
d. General description of the service pattern to handicapped children including an organizational chart setting forth how services are delivered from the district office and at the local school level
e. Assignment and use of personnel generally and by service pattern for administration, supervision, and other leadership personnel

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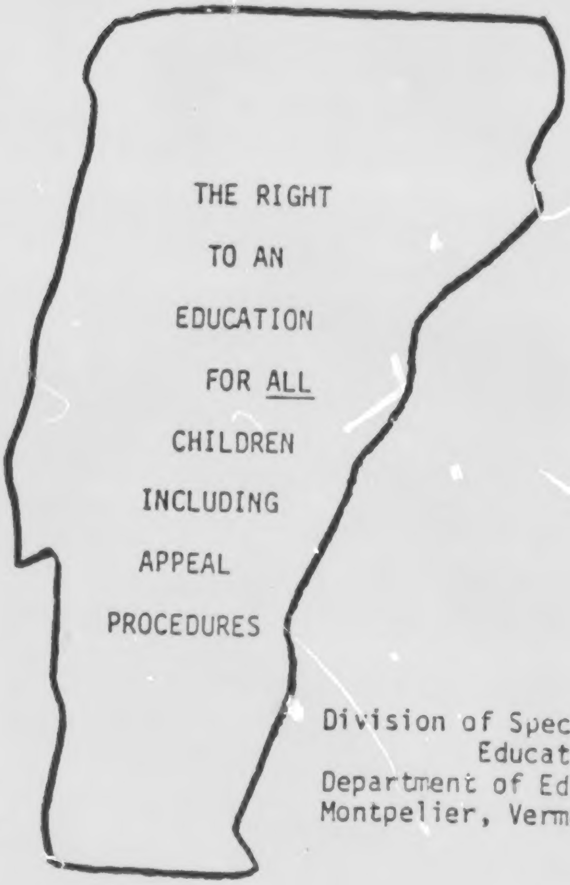

THE RIGHT TO AN EDUCATION FOR ALL CHILDREN INCLUDING APPEAL PROCEDURES

Division of Special
Education
Department of Education
Montpelier, Vermont

STATE OF VERMONT

Governor - Thomas P. Salmon

State Board of Education 1975

Joan Hoff, Chairperson	Burlington
Marie Condon	North Bennington
David A. Gibson, Vice Chairperson	Guilford
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Barbara W. Snelling	Shelburne
John F. Willson	St. Albans

Robert A. Withey, Commissioner of Education

Alan Weiss, Deputy Commissioner

Jean S. Garvin, Director, Special Education

This pamphlet is meant to inform the public about the rights and responsibilities of persons with handicapping conditions and the process for obtaining those rights. It is not recommended as a resource to be used in preparing to exercise the rights of the handicapped. Should such a resource be desired, please consult the actual amendments to the State Plan on file in the office of your Superintendent of Schools.

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- WHEN TO USE DUE PROCESS PROCEDURES
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THE WHY OF THIS BOOKLET

The purpose of this booklet is to be sure that parents and school boards are fully informed about their rights and responsibilities. Building the programs to assure a free public education for all pupils often means reviewing our policies, adjusting our programs, funding additional programs and establishing new working relationships among parents and professionals. Some or all of these may be required in your districts. We request that you pay particular attention to the requirement to have due process procedures in effect immediately.

Our goal is to have such exemplary school programs that lengthy hearings and costly legal action are avoided. Persons who really care about handicapped children will not substitute legal action for timely educational planning.

Should differences arise among us in meeting our obligations, the due process procedures are available to us to assist in working out these differences.

Let the record show that Vermonters undertake these obligations on behalf of handicapped children and their parents not because we have to, but because it is right.

DEFINITIONS

CHILD - Any infant, child or youth aged birth thru twenty (0-21).

HANDICAPPING CONDITION - Any child who is impaired in normal educational processes by reason of physical, mental, or other learning disabilities or is temporarily or permanently hospitalized or homebound is considered to have a handicapping condition.

* **FREE APPROPRIATE EDUCATION** means special education and related services which (a) have been provided at public expense under public supervision and direction, and without charge, (b) have met the standards of the state education agency, (c) include an appropriate pre-school, elementary, or secondary school education, (d) are based on an individualized education program.

* **INDIVIDUALIZED EDUCATION PROGRAM** means a written statement for each child with a handicapping condition which includes (a) a statement of the present levels of educational performance, (b) a statement of annual goals, short-term instructional objectives, (c) specific educational services to be provided, and the extent to which a child will be able to participate in regular educational programs, (d) duration of services, and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

LEAST RESTRICTIVE ALTERNATIVE - to maximum extent appropriate, children with a handicapping condition are educated with children who are not handicapped.

DUE PROCESS PROCEDURES - a series of steps that may be taken by parents or school boards to guarantee fairness if they have evidence that a child has been denied his rights in receiving an appropriate education.

* taken from EHA-B, 93-380, 94-142

THE RIGHT TO [illegible] EDUCATION

"It is hereby declared to be the policy of the state to provide equal educational opportunities for all children in Vermont."

Title 16 of the Vermont Statutes, Section 2941-54 (1951)

"It is the purpose of this Act to ASSURE that ALL handicapped children have available to them ... A FREE APPROPRIATE PUBLIC EDUCATION and related services designed to meet their unique needs ... and to assure that the rights of handicapped children and their parents ... are protected."

Laws of the United States 1975 Education of all Handicapped Children Act,
Amended by P.L. 93-390 and 94-142.

RIGHTS AND RESPONSIBILITIES OF PARENTS

All parents of a child with a handicapping condition have a right:

- to a free public education for their child
- to informed consent before any major change is made in the educational program for their child
- to challenge the accuracy of information in their child's record
- to the right to have their child educated in the least restrictive (most clearly normal) school setting
- to challenge the appropriateness of their child's educational program
- to be informed of due process procedures
- to appropriate educational assessment for their child in the primary language of the child
- ~~to non-discriminatory assessment~~
- to full knowledge about special education programs for their child

All parents have the responsibility:

- to cause their child between ages seven and sixteen to attend school regularly
- to correct or request assistance in correcting physical and other conditions that hinder his learning as one aspect of their involvement in their child's individual educational program
- to be involved in their child's individual educational program

RIGHTS AND RESPONSIBILITIES OF SCHOOL BOARDS AND OTHER OFFICIALS

The rights and responsibilities of school boards and administrative officers in regard to all pupils are described in Vermont Law. This section serves to highlight certain rights and responsibilities in regard to pupils with handicapping conditions.

All school boards and their administrative officers have the right:

- to effect due process if there is evidence that a parent is denying his child an appropriate education or assessment/or another situation requiring remedy.

All school boards through their ~~surrogate~~ administrative officer have the responsibility:

- to enroll all legal pupils
- to educate all pupils with handicapping conditions and refer for assistance where it is needed to carry out the required special educational procedures
- to participate with the state in the continuing process of locating and determining the needs of children with handicapping conditions
- to provide a planned continuum of special education programs and to assure that each handicapped child is provided with the least restrictive alternative
- to effect a clear district policy as to how pupils with handicapping conditions are educated
- to effect a clear policy of due process and confidentiality procedures
- to provide an appropriate education to ev[illegible] handicapped child by September 1, 1978.

WHEN TO USE DUE PROCESS PROCEDURES

Due process procedures are used by parents when the parent has tried to remedy a grievance by contacting the person in charge of the educational program of his child and believes he has been denied fair treatment.

Due process procedures are to be used by school district personnel when a child is being denied a right by a parent and that parent refuses to take reasonable steps to remedy the situation for the child or to agree to corrective action by the school.

HOW TO USE DUE PROCESS PROCEDURES

First Step

At any time, a parent or school officials may request a conference for the purpose of resolving the grievance. Parents and school officials may invite appropriate people to be present. Parents wishing a conference should phone, visit, or write the school principal and request that the superintendent arrange and chair a conference.

Second Step

If the parent or school official believes that the situation has not been rectified as a result of the conference, he may request the Commissioner of Education to convene an informal meeting to resolve differences and establish a plan. Parents and school officials may invite appropriate people to be present. Requests for this type of conference may be made to Jean Garvin, Director of Special Education.

Third Step

Parents or school officials who have evidence that the informal meetings did not resolve the problem, may appeal in writing for a formal due process hearing. The Commissioner of Education will appoint an impartial hearing officer who will listen to both sides of the case. Specialists and counsel may be invited. The decision of the hearing officer is binding on both parties. Requests for a due process hearing may be made to Robert A. Withey, Commissioner of Education, State Office Building, Montpelier.

Fourth Step

Appeal from the decision of the Hearing Officer, may be made to the State Board of Education. The State Board may use facts previously established, hear new evidence, and make an independent ruling. Requests for this appeal may be made to Mrs. Joan Hoff, Chairman of the State Board of Education.

Fifth Step

Appeal to the courts.

VIRGINIA

CHAPTER IV

DELIVERY OF SERVICES

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CHAPTER IV

DELIVERY OF SERVICES

Section 4.1 Determination of Eligibility (Continued)

4.1.3 Procedural Safeguards in Determination of Eligibility

1. Definitions

1.1 Parent. The term "parent" means the person(s) having parental or legal guardianship responsibility for the child. The term parent may include a natural mother or father, the adoptive mother or father, or the legally appointed guardian or committee who has custody of the child.

The term "parent" also includes a surrogate parent appointed pursuant to provisions set forth herein (Section 4.1.3/3).

The term "parent" means the child if the child has reached the age of majority (18 years of age).

1.2 Notification. Terms such as "notice" and "notification" mean:

1.2.1 Written statements in English and in the primary language of the parent's home; and

1.2.2 Oral communication in the primary language of the parent's home.

1.3 Impartial Hearing Officer. The term "impartial hearing officer" means a person or a tribunal of persons from a list maintained by the Executive Secretary of the State Supreme Court at the request of the Superintendent of Public Instruction from a list of approved hearing officers prepared by the Attorney General. An impartial hearing officer must be:

1.3.1 Unbiased--not prejudiced for or against any party involved in the hearing; and

1.3.2 Disinterested--not having any personal interest at stake in the outcome; and

1.3.3 Independent--not an officer or agent of the local school division or the State Department of Education.

4.1.3 Procedural Safeguards in Determination of Eligibility (Continued)

2. Due Process Guarantees

2.1 Parental Permission for Testing. When there is reason to believe that a child is in need of special education services or when a child currently receiving special education services becomes the subject of individual evaluation procedures (formal testing and assessment), advance written permission for such procedures shall be obtained from the parent.

See Appendix A for suggested permission form.

2.1.1 Prior Notice. Notice requesting permission for such testing shall include the following:

2.1.1.1 The reasons the evaluation has been requested; and

2.1.1.2 The name and position of the person(s) who requested the evaluation; and

2.1.1.3 A statement of the parental right to refuse the evaluation, with the understanding that the local division superintendent or his designee may appeal the parental decision in order to obtain approval to conduct the evaluation; and

2.1.1.4 A statement of the parental right to be fully informed of the results of the evaluation and access to the records of the child; and

See Section 4.1.3/4 for information about procedures and regulations regarding confidentiality of records and parental right of access.

2.1.1.5 A declaration that the requested evaluation procedures will not take place without the knowledge and written approval of the parent, or until the notice and due process procedures have been exhausted.

1.4 *Days*. The term "days" means administrative working days, exclusive of Saturdays, Sundays, and officially designated holidays of the local school division.

1.5 *Child*. The term "child" means any person who *shall* not have reached his/her twenty-first birthday by December 31 of the current school year.

1.6 *Local School Division*. The term "local school division" means the school division responsible for providing educational services to the child.

1.7 *Testing*. The term "testing" means individual evaluation procedures (formal testing and assessment) to determine initial *or* continued eligibility for special education services.

1.8 *Appropriate Education*. The term "appropriate education" means that educational program which is determined to meet the child's needs *and* is agreed to by all parties or is adjudicated through due process procedures.

2.1.2 Parental Request for Testing. When a parental request for testing is received, the local division superintendent or his designee shall notify the parent within fifteen (15) days of the receipt of the request regarding his decision. If the decision is to deny the parental request, such notice shall include the following:

2.1.2.1 A clear statement of the specific and complete reasons for the denial; and

2.1.2.2 The name and position of the person(s) recommending the denial; and

2.1.2.3 A statement of the parental right of access to all the records of the child; and

2.1.2.4 A statement of the parental right to appeal the denial. Within ten (10) days following receipt of notification of the denial of the parental request for testing, the parent shall notify the local school board in writing that an appeal is being initiated.

2.1.3 Parental Refusal. If the parent refuses to give permission, appropriate personnel representing the local school division shall attempt to seek resolution through an individual conference(s) with the parent. If the parent still refuses to allow the proposed evaluation, the local division superintendent or his designee may:

2.1.3.1 Accept the parental decision; or

2.1.3.2 Appeal the parental decision by notifying the local school board within ten (10) days that an appeal is being initiated following parental refusal to give permission for testing; or

2.1.3.3 Use procedures provided by law to reverse parental decision.

2.1.4 Parental Failure to Respond. Should a parent fail to respond within twenty (20) days to the attempts of the local school division to notify the parent to obtain consent for the evaluation, the local division superintendent or his designee may appeal to the local school board. The local school division may proceed with the evaluation of the child's special needs provided that the following conditions are met:

2.1.4.1 The local division superintendent or his designee demonstrates by documentation that the local school division has repeatedly attempted to contact the parent through efforts that were likely to succeed; and

2.1.4.2 The local division superintendent or his designee establishes through documentation of the child's performance that there is reasonable likelihood that the child will be found to have special needs in the child's present placement; and

2.1.4.3 The local school board authorizes the local division superintendent or his designee to proceed with the evaluation; and

2.1.4.4 The local school board provides notice to the parent that the evaluation is proceeding; and

2.1.4.5 The local school board provides notice to the parent regarding the parental right to appeal within ten (10) days following receipt of notification of the local school board's authorization to proceed with testing following parental failure to respond by notifying the local school board in writing that an appeal is being initiated.

2.2 Appeals to the Local School Board. When appeals of decisions are made under provisions of Section 4.1.3/2.1.2.4, Section 4.1.3/2.1.3.2, or Section 4.1.3/2.1.4.5, a review shall take place within twenty (20) days following the procedures set forth below:

2.2.1 Steps shall be taken to assure that evaluation procedures which might have been instituted with the authorization of the local school board cease until the local school board enters a decision following the review by the Independent Evaluation Committee.

2.2.2 Notice of Review. The local school board shall notify the parent and the local division superintendent or his designee within ten (10) days following receipt of the appeal request that the appeal procedure has been initiated. This notice shall include the following:

2.2.2.1 The names and positions of members of an Independent Evaluation Committee appointed by the local school board upon the recommendation of the local division superintendent or his designee; said committee to have a minimum of five members who are not employees of the local school board and to include:

a. An educator certified and endorsed in the area of the handicapping condition of the child;

b. A representative of another local school division having responsibility for the education of handicapped children;

c. A representative of another local public agency having responsibility for handicapped children;

d. A certified school psychologist; and

e. Other appropriate personnel as deemed necessary, including a representative of the State school or agency providing services to similarly handicapped children.

2.2.2.2 The parental right of access to school records of the child for inspection and copying at reasonable cost, not to exceed the cost of reproduction.

2.2.2.3 The right of the parent to appear or to be represented at this review.

2.2.2.4 The right of the local division superintendent to appear or to be represented at this review.

2.2.2.5 The right of the parent to offer additional information relevant to the issue.

2.2.2.6 The right of the local division superintendent or his designee to offer additional information relevant to the issue.

2.2.2.7 The time and place of the review which shall be reasonably convenient for all parties, and which date shall not be more than twenty (20) days following notification of appeal.

2.2.3 Procedures at the Review. The review by the Independent Evaluation Committee shall be conducted according to the following procedures:

2.2.3.1 The review shall be conducted in a fair and impartial manner to the end that all parties involved in the review have the opportunity to present their evidence and testimony.

2.2.3.2 The parent and the local division superintendent may have representatives attend the review, including, but not limited to, legal counsel or other professional persons.

2.2.3.3 The review shall be a closed review.

2.2.3.4 The parent and the local division superintendent or his designee shall have the right to present evidence and testimony, including expert, medical, psychological, sociological, and educational testimony.

2.2.3.5 The parent and the local division superintendent shall have an opportunity to confront and question all witnesses at the review.

2.2.3.6 The burden of proof as to the need for the proposed evaluation will be upon the party initiating the appeal except in cases appealing the authorization for the evaluation by the local school board following parental failure to respond (Section 4.1.3/2[illegible].4.5) when the burden of proof will be on the local division superintendent.

2.2.4 Decision of the Local School Board. The decision of the local school board shall be issued in accordance with the following requirements:

2.2.4.1 The Independent Evaluation Committee shall review the evidence and testimony and report in writing its findings and recommendations to the local school board through the local division superintendent or his designee.

2.2.4.2 The local school board shall make a decision at its next regular meeting unless it is determined that additional information is needed. In no instance shall this process require more time than two regular meetings of the local school board or forty (40) days, whichever is less.

2.2.4.3 The local school board shall notify the parent and the local division superintendent within five (5) days following the board's action on the appeal. Such notice shall include the following:

a. A copy of the findings and recommendations of the Independent Evaluation Committee.

b. A statement that the decision of the local school board is binding upon the local division superintendent subject to procedures for appeal.

c. A statement of the right of the parent and the local division superintendent to appeal the decision to the Superintendent of Public Instruction.

2.2.5 Appeals. To appeal a decision of the local school board, the parent or the local division superintendent or his designee shall notify the Superintendent of Public Instruction within ten (10) days that an appeal is being initiated. Such notice shall request the appointment of an impartial hearing officer to conduct an impartial due process hearing.

2.3 Impartial Due Process Hearing. When appeals of decisions are made under provisions of Section 4.1.3/ 2.2.5, a hearing shall take place following the procedures set forth below:

2.3.1 Prerequisites to a Hearing. Before the hearing is conducted, the following steps shall take place:

2.3.1.1 The hearing officer shall notify the parent of the right of access to school records of the child for inspection and copying at reasonable cost, not to exceed the cost of reproduction.

2.3.1.2 The hearing officer shall notify the parent of the right to legal counsel at the hearing.

2.3.1.3 The hearing officer shall notify the parent or parent's counsel of the right to have in attendance any official employee or agent of the local school division or any public employee who may have evidence upon which the proposed action may be based and to confront and cross-examine any witness testifying for the local school division.

2.3.1.4 The hearing officer shall notify the parent and the local division superintendent of the time and place of the hearing which shall be reasonably convenient for all parties.

2.3.1.5 Steps shall be taken to assure that evaluation procedures which might have been instituted following the decision of the local school board cease until the hearing officer enters a decision following the hearing.

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2.3.2 Procedures at the Hearing. The due process hearing shall be conducted in accordance with the following procedures:

2.3.2.1 The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all parties involved in the hearing have an opportunity to present their evidence and testimony.

2.3.2.2 The parent and the local division superintendent may have representatives attend the hearing, including, but not limited to, legal counsel or other professional persons.

2.3.2.3 The hearing shall be a closed hearing unless both the parent and local division superintendent or his designee request an open hearing. Should only one of the parties request an open hearing, the hearing officer shall decide whether the hearing will be open or closed after listening to the views of both parties.

2.3.2.4 The parent and the local division superintendent or his designee shall have the right to present evidence and testimony, including expert medical, psychological, sociological, and educational testimony.

2.3.2.5 The parent and the local division superintendent or his designee and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.

2.3.2.6 If the child has not reached the age of majority, the parent shall have the right to determine whether the child should attend the hearing except:

a. Upon a finding by the hearing officer that attendance by the child would be harmful to the child's welfare, the child may be excluded from portions of or the entirety of the hearing; or

b. Upon a finding by the hearing officer that attendance by the child would be essential to the child's welfare, the child may be present at portions of or the entirety of the hearing.

2.3.2.7 The burden of proof as to the need for the proposed evaluation will be on the party initiating the appeal.

2.3.2.8 At all stages of the due process hearing, when needed, interpreters for the deaf and interpreters fluent in the primary language of the parent's home shall be provided at public expense.

2.3.2.9 A verbatim record of the hearing shall be made at public expense and entrusted to the custody of the hearing officer.

2.3.3 Decision of the Hearing Officer. The decision of the hearing officer shall be issued in accordance with the following requirements:

2.3.3.1 Within fifteen (15) days after the hearing, the hearing officer shall render a decision in writing. Notice of the decision shall be sent by certified mail to the parent, the local school division superintendent, and their respective counsels.

2.3.3.2 The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions.

2.3.3.3 The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.

2.3.3.4 A summary of the proceedings at the hearing shall be made, which shall include any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties at the hearing within fifteen (15) days.

2.3.3.5 Upon request of the parent or the local division superintendent or his designee, a copy of the verbatim record will be provided within fifteen (15) days of the request and at reasonable cost.

2.3.3.6 The decision of the hearing officer shall include a statement of the procedures to be used for appealing said decisions.

2.4 Appeals. Notice shall be provided to the parent and to the local division superintendent of the right to appeal the decision of the Board of Education through its impartial designee to a State court.

Section 4.2 Pupil Placement (Continued)

4.2.3 Procedural Safeguards in Pupil Placement

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CHAPTER IV

DELIVERY OF SERVICES

Section 4.2 Pupil Placement

4.2.3 Procedural Safeguards in Pupil Placement

1. Definitions. See Section 4.1.3/1 for definitions which apply to this section.

2. Due Process Guarantees.

2.1 Parental Permission for Program Change. Whenever a change is proposed in the way in which educational services are provided in the educational program of a child who has been found eligible for special education, including proposed changes resulting from periodic reviews, advance written permission shall be obtained from the parent. Such permission shall be obtained for

a. Assignment into the special education program, or

b. Changes within the special education program, or

c. Assignment out of the special education program.

See Appendix A for suggested permission form.

2.1.1 Prior Notice. Notice requesting permission for such placement shall include those items required under Prior Notice for Testing (Section 4.1.3/2.1.1). In addition such notice shall include the following:

2.1.1.1 A detailed description of the proposed action; and

2.1.1.2 Specification of any tests or reports upon which such action is based.

2.1.2 Parental Request for Program Change. When a parental request for a different placement is received, the local division must notify the parent within twenty (20) days of the receipt of the request regarding its decision. The decision may be one of the following:

2.1.2.1 Approval of the parental request; or

2.1.2.2 Initiation of the "Determination of Eligibility" process or

2.1.2.3 Denial of the parent's request. If the decision is to deny the parent's request, such notice shall include:

a. A clear statement of the specific and complete reasons for the denial, including the specification of any tests or reports upon which such action is based; and

b. The names and positions of the persons who have recommended the denial (Placement Committee); and

c. A statement of the parental right of access to the school records of the child; and

d. A statement of the parental right to appeal the denial. Within ten (10) days following receipt of notification of the denial of the parental request for placement, the parent shall notify the local school board in writing that an appeal is being initiated.

2.1.3 Parental Refusal. If the parent refuses to give permission, appropriate personnel representing the local school division shall attempt to seek resolution through an individual conference(s) with the parent. If the parent still refuses to allow the proposed placement, the local division superintendent or his designee may:

2.1.3.1 Accept the parental decision; or

2.1.3.2 Appeal the parental decision by notifying the local school board that an appeal is being initiated within ten (10) days following parental refusal to give permission for placement; or

2.1.3.3 Use procedures provided by law to reverse the parental decision.

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2.1.4 Parental Failure to Respond. Should a parent fail to respond to the local school division's attempts to notify the parent and to obtain permission for placement, the local division superintendent or his designee may appeal to the local school board. The local school division may proceed with the proposed action provided that the following conditions are met:

2.1.4.1 The local division superintendent or his designee demonstrates by documentation that the local school division has repeatedly attempted to contact the parent through efforts that were likely to succeed; and

2.1.4.2 The local division superintendent or his designee establishes that there is a need for the proposed action through documentation; and

2.1.4.3 The local school board authorizes the local division superintendent or his designee to proceed with the placement; and

2.1.4.4 The local school board provides notice to the parent that the placement is taking place; and

2.1.4.5 The local school board provides notice to the parent regarding the parental right to appeal within ten (10) days following receipt of notification of the local school board's authorization to proceed with the placement following parental failue to respond by notifying the local school board in writing that an appeal is being initiated.

2.2 Appeals to the Local School Board. When appeals of decisions are made under provisions of Section 4.2.3/2.1.2.4, Section 4.2.3/2.1.3.2, or Section 4.2.3/2.1.4.5, a review shall take place within twenty (20) days following the procedures set forth below:

2.2.1 The local school board shall take steps to insure that the child will remain in the present educational placement until such time as there is a decision following the review by the Independent Evaluation Committee or until a proposed educational placement is accepted by both parties. In an emergency situation where the health and/or safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the hearing officer.

2.2.2 The local school board shall notify the parent and the local division superintendent or his designee within ten (10) days following receipt of the appeal request that the appeal procedure has been initiated. This notice shall include the following:

2.2.2.1 The names and positions of members of an Independent Evaluation Committee appointed by the local school board upon the recommendation of the local division superintendent or his designee; said committee to have a minimum of five members who are not employees of the local school board and to include:

a. An educator certified and endorsed in the area of the handicapping condition of the child;

b. A representative of another local school division having responsibility for handicapped children.

c. A representative of another local public agency having responsibility for handicapped children;

d. A certified school psychologist; and

e. Other appropriate personnel as deemed necessary, including a representative of the State school or agency providing services to similarly handicapped children.

2.2.2.2 The parental right of access to school records of the child for inspection and copying at reasonable cost, not to exceed the cost of reproduction.

2.2.2.3 The right of the parent to appear or to be represented at this review.

2.2.2.4 The right of the local division superintendent to appear or to be represented at this review.

2.2.2.5 The right of the parent to offer additional information relevant to the issue.

2.2.2.6 The right of the local division superintendent or his designee to offer additional information relevant to the issue.

2.2.2.7 The time and place of the review which shall be reasonably convenient for all parties, and which date shall not be more than twenty (20) days following notification of appeal.

2.2.3 Procedures at the Review. The review by the Independent Evaluation Committee shall be conducted according to the following procedures:

2.2.3.1 The review shall be conducted in a fair and impartial manner to the end that all parties involved in the review have the opportunity to present their evidence and testimony.

2.2.3.2 The parent and the local division superintendent may have representatives attend the review, including, but not limited to, legal counsel or other professional persons.

2.2.3.3 The review shall be a closed review.

2.2.3.4 The parent and the local division superintendent or his designee shall have the right to present evidence and testimony, including expert medical, psychological, sociological, and educational testimony.

2.2.3.5 The parent and the local division superintendent shall have an opportunity to confront and question all witnesses at the review.

2.2.3.6 The burden of proof as to the need for the proposed placement will be upon the party initiating the appeal, except in cases appealing the authorization for placement by the local school board following parental failure to respond (Section 4.2.3/2.1.4.5) when the burden of proof will be on the local division superintendent.

2.2.4 Decision of the Local School Board. The decision of the local school board shall be issued in accordance with the following requirements:

2.2.4.1 The Independent Evaluation Committee shall review the evidence and testimony and report in writing its findings and recommendations to the local school board through the local division superintendent or his designee.

2.2.4.2 The local school board shall made a decision at its next regular meeting unless it is determined that additional information is needed. In no instance shall this process require more time than two regular meetings of the local school board or forty (40) days, whichever is less.

2.2.4.3 The local school board shall notify the parent and the local division superintendent within five (5) days following the board's action on the appeal. Such notice shall include the following:

a. A copy of the findings and recommendations of the Independent Evaluation Committee.

b. A statement that the decision of the local school board is binding upon the parent and upon the local division superintendent subject to procedures for appeal.

c. A statement of the right of the parent and the local division superintendent to appeal the decision to the Superintendent of Public Instruction.

2.2.5 Appeals. To appeal a decision of the local school board, the parent or the local division superintendent or his designee shall notify the Superintendent of Public Instruction within ten (10) days following receipt of notification of the local school board's decision that an appeal is being initiated. Such notice shall request the appointment of an impartial hearing officer to conduct an impartial due process hearing.

2.3 Impartial Due Process Hearing. When appeals of decisions are made under provisions of Section 4.2.3/ 2.2.5, a hearing shall take place following the procedures set forth below:

2.3.1 Prerequisites to a Hearing. Before the hearing is conducted, the following steps shall take place:

2.3.1.1 The hearing officer shall notify the parent of the right of access to school records of the child for inspection and copying at reasonable cost, not to exceed the cost of reproduction.

2.3.1.2 The hearing officer shall notify the parent of the right to legal counsel at the hearing.

2.3.1.3 The hearing officer shall notify the parent or parent's counsel of the right to have in attendance any official employee or agent of the local school division or any public employee who may have evidence upon which the proposed action may be based and to confront and cross-examine any witness testifying for the local school division.

2.3.1.4 The hearing officer shall inform the parent of the right to obtain an independent evaluation. Such notice shall include the information that the child may be eligible to receive the services of a public diagnostic center for an independent medical, psychological, sociological, and educational evaluation and shall specify the name, address, and telephone number of an appropriate nearby public diagnostic center.

2.3.1.5 The local division superintendent or his designee shall describe any alternative educational opportunities and give the reasons why such alternative opportunities are not as appropriate for the child as is the proposed placement.

2.3.1.6 The hearing officer shall notify the parent and the local division superintendent of the time and place of the hearing which shall be reasonably convenient for all parties.

2.3.1.7 The hearing officer shall take steps to insure that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by both parties. In an emergency situation where the health and/or safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the hearing officer.

2.3.2 Procedures at the Hearing. The due process hearing shall be conducted in accordance with the following procedures:

2.3.2.1 The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial mannner to the end that all the parties involved in the hearing have the opportunity to present their evidence and testimony.

2.3.2.2 The parent and the local division superintendent may have representatives attend the hearing, including, but not limited to, legal counsel or other professional persons.

2.3.2.3 The hearing shall be a closed hearing unless both the parent and the local division superintendent or his designee request an open hearing. Should only one of the parties request an open hearing, the hearing officer shall decide whether the hearing will be open or closed after listening to the views of both parties.

2.3.2.4 The parent and the local division superintendent or his designee shall have the right to present evidence and testimony, including expert medical, psychological, sociological, and educational testimony.

2.3.2.5 The parent and the local division superintendent or his designee and their respective representatives shall have an opportunity to confront and question all witnesses at the hearing.

2.3.2.6 If the child has not reached the age of majority, the parent shall have the right to determine whether the child should attend the hearing except:

a. Upon a finding by the hearing officer that attendance by the child would be harmful to the child's welfare, the child may be excluded from portions of or the entirety of the hearing; or

b. Upon a finding by the hearing officer that attendance by the child would be essential to the child's welfare, the child may be present at portions of or the entirety of the hearing.

2.3.2.7 The burden of proof as to the appropriateness of any proposed placement will be on the party initiating the appeal.

2.3.2.8 At all stages of the due process hearing, when needed, interpreters for the deaf and interpreters fluent in the primary language of the parent's home shall be provided at public expense.

2.3.2.9 A verbatim record of the hearing shall be made at public expense and entrusted to the custody of the hearing officer.

2.3.3 Decision of the Hearing Officer. The decision of the hearing officer shall be issued in accordance with the following requirements:

2.3.3.1 Within fifteen (15) days after the hearing, the hearing officer shall render a decision in writing. Notice of the decision shall be sent by certified mail to the parent, the local division superintendent, and their respective counsels.

2.3.3.2 The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions.

2.3.3.3 The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.

2.3.3.4 a. If the decision is to disapprove a proposed educational placement, it shall include a statement as to what is an adequate and appropriate educational placement for this child and the basis for this conclusion; or

b. If the decision is to approve a proposed educational placement, it shall include a finding that this is the least restrictive program which could adequately and appropriately serve the child's educational needs and the basis for this conclusion.

2.3.3.5 A summary of the proceedings at the hearing shall be made, which shall include any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties at the hearing within fifteen (15) days.

2.3.3.6 Upon written request of the parent or the local division superintendent or his designee, a copy of the verbatim record will be provided within fifteen (15) days of the request and at reasonable cost.

2.3.3.7 A statement shall be included that the decision of the hearing officer is binding upon the parent and upon the local school division, its officers employees, and agents, subject to procedures for judicial appeal.

2.3.3.8 The decision of the hearing officer shall include a statement of the procedures to be used for appealing said decisions.

2.4. Appeals. Notice shall be provided to the parent and to the local division superintendent of the right to appeal the decision of the Board of Education through its impartial designee to a State court.

State Board of Education
Richmond, Virginia 23216
March 21, 1975

Rules and Regulations for Tuition Assistance for the Education of Handicapped Children in Virginia Attending Approved Private Nonsectarian Schools for the Handicapped, 1975-76.

(In compliance with Sections § 22-10.5 and § 22-10.8 , Code of Virginia, 1974 Acts of the General Assembly.)

A. PUBLIC ANNOUNCEMENT

Each local school board shall utilize available public media to appraise parents and guardians of the tuition assistance program for eligible handicapped children by June 15, 1975.

B. DEFINITION

Handicapped children include those who are mentally retarded, physically handicapped, emotionally disturbed, learning disabled, hearing impaired, multiple handicapped and visually impaired as defined in the publications Administrative Requirements and Guidelines for Special Education Programs, 1972, and Services for Exceptional Children, A Guide for Program Improvement, 1970, Virginia State Department of Education.

C. ELIGIBILITY OF PUPIL

In order to determine the eligibility of a handicapped child for tuition assistance, the following requirements must be fulfilled:

1. For the school year 1975-76, the handicapped child must have reached his/her fifth birthday by December 31, 1975, and shall not have reached his/her twenty-first birthday by December 31, 1975. If hearing impaired, the handicapped child may be between the ages of two and twenty-one.

2. The child must be identified as handicapped in accordance with State Board of Education definitions and procedures, after careful review of appropriate professional evaluations. Additionally, it must be determined that the school division is unable to provide appropriate special education for this handicapped child, either locally or through arrangement with another school division, and such education is not available in the State schools or institutions. Such evaluations shall be on file and available for review by designated State Department of Education personnel.

3. The parent or guardian of the child for whom tuition assistance is requested must provide necessary evaluative information [medical, social, psychological (psychiatric if appropriate), and educational] to the local school division and, when requested, must give written permission for additional evaluations as needed for the determination of eligibility.

4. Application on the official form accompanied by the above shall be submitted by the parent or guardian to the local school division by July 15, 1975 to be eligible for initial consideration for school year 1975-76.

5. Tuition assistance will not be allowed when the handicapped child no longer requires special education services, graduates from high school or a State Board of Education approved training program.

D. LIST OF APPROVED PRIVATE NONSECTARIAN SCHOOLS FOR THE HANDICAPPED

The State Department of Education shall provide to local school divisions an updated list of those approved private nonsectarian schools for the handicapped in which eligible handicapped children enrolled may receive tuition assistance from their local school division. Tuition payments shall be restricted to this updated listing. Should eligible handicapped children be enrolled in a school not listed, the local school division should contact the Division of Special Education to determine the eligibility of the private school.

E. PUBLIC SCHOOL DIVISIONS

1. The superintendent of the local school division shall certify that the child is handicapped in accordance with State Board of Education definitions. This determination shall be made upon recommendation of the local school division placement committee after careful review of evaluative information: medical, social, psychological (psychiatric, if appropriate) and educational. Local school division personnel should assist parents in obtaining the necessary evaluative information. Such evaluations shall be on file and available for review by designated State Department of Education personnel.

2. The superintendent of the school division in which the parent or guardian has legal residence shall certify that all resources have been explored and the school division cannot provide an appropriate educational program for the child during the school year for which application is made.

3. The superintendent of the school division shall certify that, in his judgment based on available information, State schools or institutions cannot provide an appropriate educational program for the child during the school year for which application is made.

4. The superintendent of the school division in receipt of applications accompanied by necessary evaluative data for tuition assistance shall notify the parent or guardian in writing, within 20 working days from receipt of this information regarding the eligibility status of the child.

F. PAYMENT OF TUITION ASSISTANCE TO PARENTS

1. The local school board shall pay the parent or guardian of each eligible handicapped child for school year 1975-76, three fourths of the tuition cost and shall not be obligated to pay more than $1250 for a child in a nonresidential school nor $5000 for a child in a residential school; provided, however, that the local school board is not required to provide such aid if matching State funds are not available.

2. Payment shall be made in a minumum of two installments after the submission of evidence that the parent or guardian has made payment or obligated payments to the private school and that the private school has certified in writing to the public school division the enrollment and attendance of the eligible handicapped child.

3. *"Payment by a local school board . . . to a parent or guardian who is obligated to pay for a child's attendance at a private nonsectarian school for the handicapped shall be by a check jointly payable to such school and to such parent or guardian."*

4. *"Payment by a local school board . . . to reimburse a parent or guardian who has paid for a child's attendance at a private nonsectarian school for the handicapped shall be by check payable to the parent or guardian."*

G. ALLOCATION AND PAYMENT OF TUITION ASSISTANCE TO SCHOOL DIVISIONS

1. Initial applications from local school divisions to the Division of Special Education, State Department of Education, requesting an allocation of State funds for tuition assistance shall be submitted by August 1, 1975 on official forms provided by the Department of Education. Notification by the Division of Special Education for such approval shall be made to school divisions by September 1, 1975. Additional applications will be accepted after this date. However, all allocations will depend on availability of State funds.

2. Applications from local school divisions to the Division of Special Education requesting reimbursement for funds allocated to the school division for tuition assistance shall be submitted on the official requisition form specified by the Division of Special Education.

3. Tuition reimbursement may be granted for the education of eligible handicapped children in approved private nonsectarian schools for the handicapped (ages 5 - 20 except hearing impaired which ages may be 2 - 20).

   a. The local school board is eligible for reimbursement on 60% of the actual tuition cost required of the locality not to exceed $750 per child per school year in State aid in a nonresidential school.

   b. The local school board is eligible for reimbursement on 60% of the actual tuition cost required of the locality not to exceed $3000 per child per school year in State aid in a residential program.

4. *"In the event State funds are not available, the local school board shall pay the parent or guardian tuition costs of such child in an amount equal to the actual per pupil cost of operation in the average daily membership for the school year immediately preceding, and such school board shall be entitled to count such pupils and receive reimbursement from the basic school aid fund in the same manner as if the child were attending the public schools."*

H. LOCAL APPEAL PROCEDURE

A parent or guardian may appeal the decision of the local division superintendent concerning the eligibility status of his/her child for tuition assistance according to the following procedures:

1. The parent or guardian shall notify the local school board in writing within 20 working days following receipt of notification of eligibility status that an appeal is being initiated. Signed permission by parent or guardian to release evaluations supporting the child's eligibility to an Independent Evaluation Committee should accompany this notification.

2. The local school board shall, upon recommendation of the local superintendent, name the members of the Independent Evaluation Committee. This Committee must have a minimum of five members who are not employees of the local school board including:

   a. An educator certified and endorsed in special education

   b. An educator certified and endorsed in the area of the handicapping condition of the child

   c. A representative of another local public agency having responsibility for handicapped children

   d. Other appropriate personnel as deemed necessary, including a representative of the State school or agency in which residential placement is considered.

3. The parent or guardian shall be notified in writing within 10 working days following receipt of appeal request of the time, date and place the Independent Evaluation Committee will review this appeal, which date shall be no more than 20 working days following notification of appeal. Parents or guardians shall have the right to appear or to be represented at this review and shall have the right to offer additional information to support the tuition request.

4. The local school division shall have the right to be represented at this review and shall have the right to offer additional information relevant to this tuition request.

5. This Committee shall review the evaluations and report its findings and recommendations to the local school board through the local superintendent of schools.

6. The local school board shall make a decision at its next regular meeting unless it is determined that additional information is needed. In no instance shall this process require more time than two regular meetings of the local school board.

7. The parent or guardian shall be notified of the decision in writing within five (5) working days following the local school board's action on the appeal.

I. STATE APPEAL PROCEDURE

1. If the parent or guardian should be dissatisfied with the decision of the local school board, an appeal may be addressed in writing to the State Superintendent of Public Instruction within 30 working days following receipt of the local school board's decision. This appeal must be accompanied by signed permission for the release of evaluations supporting the child's eligibility by the local school division to a State Hearing Officer.

2. Within five (5) working days following the receipt of the appeal request, the Superintendent of Public Instruction shall request the State agency maintaining the approved list of hearing officers to designate a hearing officer to hear this appeal.

3. This State Hearing Officer so designated shall convene a hearing, within 30 working days following receipt of the request from the Superintendent of Public Instruction.

4. The parent or guardian shall be notified in writing within 10 working days following receipt of the request from the Superintendent of Public Instruction of the time and place the hearing will be held to review this appeal. Parents or guardians shall have the right to appear or to be represented at this hearing and shall have the right to offer additional information to support the tuition request.

5. The local division superintendent shall be notified in writing within 10 working days following receipt of the request from the Superintendent of Public Instruction of the time and place the hearing will be held to review this appeal. The local division superintendent shall have the right to appear or to be represented at this hearing and shall have the right to offer additional information relevant to this tuition request.

6. The State Hearing Officer shall render a decision in writing within fifteen (15) working days following the hearing.

7. The parent or guardian shall be notified by certified mail within five (5) working days of the decision of the State Hearing Officer.

8. The local division superintendent shall be notified by certified mail within five (5) working days of the decision of the State Hearing Officer.

RULES AND REGULATIONS

FOR THE

WASHINGTON STATE SPECIAL EDUCATION PROGRAM FOR CHILDREN WITH HANDICAPPING CONDITIONS

(AS ADOPTED JULY 27, 1973)

Dr. Frank B. Brouillet
State Superintendent of Public Instruction

Dr. Jack Frisk
Deputy Superintendent

Mrs. Mona H. Bailey
Assistant Superintendent, Division of Special Programs and Services

Mr. Floyd M. Jackson
Director, Special Services

Old Capitol Building, Olympia, Washington 98504

WAC 392-45-035 PROCEDURES FOR FUNCTIONALLY DEFINING HANDICAPPING CONDITIONS (RCW 28A.13.070).

For the purpose of meeting the requirements of chapter 28A.13 RCW, a functional definition of a said child's or individual's handicapping condition(s) shall be developed through a set of procedures that are carried out by a school district in order to identify a child as being eligible for excess cost funding in a program of special educational services. These procedures shall identify that child who is temporarily or permanently retarded in normal educational processes by reason of physical or mental handicap, or by reason of emotional maladjustment, or by reason of other handicap, and that child who has specific learning and language disabilities resulting from perceptual motor handicaps, including problems in visual and auditory perception and integration.

The procedures outlining functional definitions of handicapping conditions shall ensure that no child is denied or entered into a special education service program without thorough investigation of cultural, language, or health factors influencing his or her performances and that agreement to assessment and program placement be acceptable to and given in writing by, the child's parent or legal guardian.

The procedures herein specified shall be permanently recorded by date, and signed by a responsible school district designee and presented at two points within the procedural time period to the parent or legal guardian.

The permanent record of the procedures employed during assessment to define functionally handicapping condition(s) of the child shall be available to the parent or legal guardian, upon request, and at reasonable times, in accordance with local district policies and procedures.

The following flow chart shows the entire procedure. Each step is then explained in detail showing the appropriate sequence.

The flow chart illustrates the sequence used in functionally defining a child with a handicapping condition. School districts are encouraged to use various methods, techniques and materials in determining the extent to which a handicapping condition affects a particular child. As a visual aid, the flow chart is provided to promote understanding of the need for a thorough assessment and does not require any specific teaching nor management procedure.

1.
Child as
Focus of
Concern

WAC 392-45-040 -------CHILD AS FOCUS OF CONCERN.

The concept of special education is predicated upon the identification of the need(s) of an individual child with a handicapping condition(s) that can be alleviated more effectively if extraordinary resources are brought to bear on the child need(s) as expressed in the goals and objectives developed for that child.

A child shall become a focus of concern for special education when he is brought to the attention of school district superintendent or a member of his designated staff because of a suspected handicapping condition(s). Such concern for a child may be originated by or transmitted through any source, including: parents, medical personnel, school district personnel, community agencies, legal authorities, authorized screening procedures, or other identified interested persons.

2a.
Special Ed.
Department

WAC 392-45-045 -------REFERRAL PROCEDURE.

When a child's need has been brought to the attention of the school district superintendent or legal designee, it will be the responsibility of the district to act immediately and directly on the referral in the following ways:

(1) The superintendent or his designee must immediately record the circumstance by date, origin, and reason for concern.

(2) The superintendent or designee within 30 days must review the referral, begin an assessment program for the child, collect and examine existing school and other records, and make a determination that the child is or is not in need of further assessment. This decision must include date and person making decision. If the decision is that further assessment is not needed, this decision shall be communicated to the referral source in accordance with the sanctions and appeals section hereinafter defined. (WAC 392-45-185).

3a. Parent Decision N Y

WAC 392-45-050 -------PARENT DECISION.

Prior to the school district's initiation of the formal assessment for a handicapped condition of a child:

(1) The parent or legal guardian of the child shall be officially informed of the source and reason of referral in their primary (or native) language and interpretations made where necessary. If the primary language is not English, such notification shall be translated from English into the primary language.

(2) The steps in the procedure for assessment for appropriate programs shall be outlined including a tentative date of completion, such date to be reasonably agreeable to both parents and/or legal guardian and school authority. By this completion date, the district shall have identified an appropriate program placement.

(3) The parent or legal guardian of the child shall be apprised of his or her rights by document for rejection or acceptance of the school district's decision to evaluate.

(4) The parent or legal guardian shall then decide if his or her child is to be assessed.

5. Special Education Involvement Terminated

WAC 392-45-055 -------DECISION TO TERMINATE.

If a parent or legal guardian declines permission for assessment, the information collected to date along with a statement of its perceived educational significance for the child shall be forwarded to the superintendent or his designee for review in terms of the attendance, child welfare, and child abuse laws of the state of Washington.

4. Eligible for Excess Cost --Involved in Assessment Program

WAC 392-45-060 -------ASSESSMENT PROCEDURES.

When the parent or guardian has given permission, by signature, for the district to make an assessment of a child, that child becomes eligible for services of approved special education personnel and other contracted assessment needs through excess cost, excepting medical, as provided by chapter 28A.13 RCW.

WAC 392-45-115 -------SCHOOL DISTRICT DECISION.

The school district superintendent or his designee shall, based on the preceding procedures (WAC 392-45-035 through 392-45-110), arrive at one of the following decisions:

(1) The child does not have a handicapping condition(s);

(2) The child's educational status has not been adequately resolved and an intervention in a current program is to be used to continue the process of defining the child's educational placement;

(3) The child does have a handicapping condition(s) and the appropriate educational objectives have been established for the child with a program plan for special educational services to accomplish those objectives;

(4) The child does have a handicapping condition(s) but after careful and extensive exploration no appropriate program is available and contractual or other services are arranged (see WAC 392-45-135 through 392-45-175 -- contractual services).

The school district superintendent or his designee shall formally and duly record the decision as to the handicapping condition(s) of a child brought to the school's attention. Whatever decision is made, the information from the procedures for making that determination shall be permanently filed in school district records and the parents or legal guardian of the child immediately informed of the findings. (See appeals and sanctions procedures, WAC 392-45-185).

3b.
Parent
Decision
Y
N

WAC 392-45-120 -------PARENT DECISION.

The school district special education department shall formally advise the parents or legal guardian of the school district's decision as to a child's handicapping condition(s), the goals and objectives for the child in an educational setting and a program plan for reaching those goals and objectives. The parent or legal guardian's decision as to agreement with the findings, objectives, and placement shall be requested and duly recorded. If the parent or legal guardian's decision is not in agreement with the school district findings, legal recourse shall be explained. Upon parent or legal guardian agreement with the findings of the school district, short term objectives shall be established and the program shall be initiated.

If the parent or legal guardian refuses to allow his or her handicapped child to be placed in a special education program, and it is the decision of the district superintendent that placement in a special education program is in the best interest of the child, and thereafter the child's parent(s) or legal guardian cause the child to be in violation of the compulsory attendance laws of this state, these facts shall be presented to an appropriate law enforcement agency for processing.

Parent or legal guardian decision relating to assessment, program development and placement may also be appealed by the child, by person(s) making the referral, or by other person(s) involved in the child's care. (See appeals and sanctions procedures, WAC 392-45-185).

WAC 392-45-125 -------OBJECTIVES RELATING TO INSTRUCTIONAL PROGRAMS (SHORT TERM).

12.
Objectives
Short Term

Following the placement or assignment of a child to specific personnel or program, short term instructional objectives shall be established which are consistent with the long range placement goals. The person responsible for establishing the short term instructional objectives

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From the performance evaluation, each district shall be responsible to develop, in its own format, alternatives designed to improve methods and results.

Whenever a medical situation requires that a student receive medication or treatment during the school day, a child's parent or legal guardian shall provide school personnel with written orders and instructions from the child's physician for administering such medicines or treatment. The orders shall be current, obtained at least yearly, and reviewed and updated whenever there is significant change of the child's school activity program, in accordance with local school district policies.

WAC 392-45-135 CONTRACTUAL SERVICES (RCW 28A.13.030).

School districts, severally or jointly, with the approval of the superintendent of public instruction, shall be authorized to contract with nonpublic school agencies for appropriate educational opportunities for handicapped children, as defined in RCW 28A.13.045.

WAC 392-45-140 -------APPROVAL OF AGENCIES AND INDIVIDUALS FOR CONTRACTUAL ARRANGEMENTS.

Approval for providing contractual special education services shall be determined by the Washington state board of education (RCW 28A.13.045) and shall be made in accordance with the following procedures:

(1) School districts, prior to contracting, shall evaluate each pupil and document that no appropriate district program exists, can be reasonably established nor can be contracted for with another school district.

(2) School districts wishing to contract for services shall determine that all requirements for contracting have been met and

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WAC 392-45-170 -------WRITTEN CONTRACTS.

When a school district provides educational services for a handicapped child under an arrangement with a public or nonpublic school agency or with an individual person, such services shall be furnished in accordance with the terms of a written contract. The contract shall provide for retention by the school district of responsibility for and control of such services, and shall include the following elements:

(1) Description of the services to be provided.
(2) Setting in which services are to be provided.
(3) Geographical area served.
(4) Description of how contracted personnel are to be supervised.
(5) Description of how services are to be coordinated with the school district.
(6) Assurances that periodic child progress notes or reports are to be submitted at least monthly to the district.
(7) Methods of determining charges and reimbursement.
(8) Total dollar amount of contract.
(9) Duration of contract.
(10) Specifications of frequency of contract review.
(11) Assurances that personnel and services meet all licensing and/or certification requirements.
(12) Assurances that contracted services are to be provided only after appropriate review of case information and development of objectives based upon assessment of the child.
(13) Specification of the terms whereby the contract may be altered or terminated.

WAC 392-45-175 -------SPECIAL PLACEMENT AND PARENT APPEAL CONCERNING CONTRACTUAL ARRANGEMENTS.

In the event the district of legal residence is unable to contract with another school district, a nonpublic school agency or an appropriate state agency, the parent, through the said district, may petition the superintendent of public instruction for funds to provide an educational program with an agency in another state or Canada. Said funds shall be limited to the actual costs of providing an appropriate educational program and may include state basic support, local funds equivalent to the average per pupil costs and excess cost funds as approved by the superintendent of public instruction.

Parents wishing to appeal the placement recommended by the local director of special education shall be required to observe the policies and procedures established by the local districts. Said rules and regulations shall generally conform to the local district's policies and procedures for student rights and responsibilities as prescribed by RCW 28A.04.120(6) and RCW 28A .04.132 and such other laws as may be applicable.

WAC 392-45-180 INTERDISTRICT ARRANGEMENT (RCW 28A.13.030).

School districts severally or jointly, with the approval of the superintendent of public instruction, are authorized to enter into interdistrict agreements with any other school district(s), as specified in RCW 28A.58.075 and RCW 28A.58.240 and/or RCW 28A .58.245 and RCW 28A.58.250.

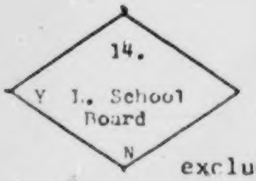
WAC 392-45-185 APPEALS AND SANCTIONS PROCEDURES (RCW 28A.13.060 through 28A.13.080).

(1) Initial admission and determination--appeals. Upon request for admission of a handicapped child to an appropriate special education program made by a parent or legal guardian, or by the child, or by person(s) making a referral, or by other person(s) involved in the child's care, the local superintendent shall determine within thirty (30) days whether the child will continue in attendance in a program through the school district. Such determination shall be made only after attempts have been made to provide a program for the child within the local school system, or by contracting with an agency to provide a program, or by providing home services.

(2) Procedure upon determination of exclusion. If the local school district superintendent determines that an exclusion is necessary he shall make an affirmative showing in writing direct to the parent or legal guardian of the child within ten days of such a decision, in accordance with the following procedures:

> (a) No agency or other school district with whom the district may contract under chapter 28A.13 RCW can accommodate such child; and,
>
> (b) Such child will not benefit from an alternative educational opportunity as permitted under chapter 28A.13 RCW.

The local superintendent also, at this time, shall notify the local school board of his decision specifying the child involved and accompanied by a statement of his reasons. After doing so he shall notify the parent(s) or legal guardian of the child and others if appropriate, so that they may appear before the school board as indicated in WAC 392-45-185 (4) (5) (6).



(3) Notice to the parents. A notification of the decision to exclude the child from an educational program provided by the school district to the parent or legal guardian and child shall be delivered by certified mail or in person. The notice shall set forth their right to appeal the decision and their right to a hearing before the local school district board of directors. It shall also include a statement of reasons why the child is being denied the opportunity of attending a special education program provided by the school district.

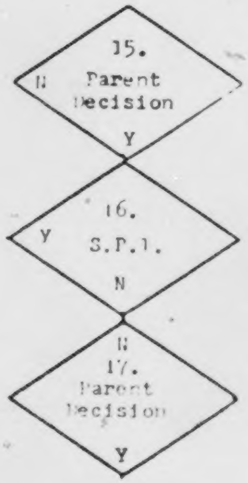
(4) Parent(s) and child rights and responsibilities. Upon notice from the local school district superintendent that his or her child is excluded from a special education program, the parent or legal guardian and child shall have thirty days within which to appeal this decision to the local school board and indicate whether or not he or she is represented by legal counsel. Otherwise the local school district superintendent's decision shall be final for the remainder of that school year.

A parent or legal guardian through inaction may not waive any of his child's rights to an education, including participation in a special education program, and any court-appointed guardian or other appropriate person may aid the child for the purposes of exercising the child's right to an education.

If such a hearing is requested, the local school district superintendent shall schedule the matter for hearing by the local school district board of directors at the next regularly scheduled meeting, or at a special board meeting, said meeting in no case to occur more than twenty days after receipt of said request.

(5) Procedure at the hearing. The administrative procedure used at such hearing before the local school board shall be substantially in compliance with the Washington administrative procedure act. The parent or guardian may be represented by counsel and shall have the right to present evidence, call such witnesses as he may desire, and cross-examine all other witnesses. The parent or legal guardian shall be permitted advance inspection of all affidavits, exhibits or evidence available to school authorities. Both parties shall be afforded a list of all witnesses to be called by each. A tape recorded, or reliable verbatim record shall be made of the hearing by the school district and sent to the superintendent of public instruction within five school days of the hearing. Such record is to be available to the parent for their appeal as requested.

The local school district board's decision shall be made in the form of written findings not more than ten days after the conclusion of the hearing. A copy of the board's report shall be sent by certified mail or delivered in person to the parent(s) or legal guardians of the child with a copy being sent to the superintendent of public instruction and a copy being placed in the local school district superintendent's office file.



(6) Further appeal. Either party shall have the right to appeal the local school board's decision within thrity days of receipt of notification of said decision directly to the superintendent of public instruction. The scheduling for such an appeal is to be made at the discretion of the superintendent of public instruction. The party shall also have the right to appeal any

County
Superior
Court

decision made by the superintendent of public instruction to the superior court in the county in which the child resides. Such appeal shall take the form of a de novo hearing on the merits.

(7) Child's continued attendance (RCW 28A.13.080). Any child subject to a determination under these proceedings shall remain in attendance throughout the proceedings as detailed in WAC 392-45-185(1).

(8) Sanctions (RCW 28A.13.080). Sanctions will be placed on a school district within thirty-five days of the district being found not in compliance with chapter 28A.13 RCW. These sanctions shall include but not be limited to the withholding of not less than twenty-five percent or more than seventy-five percent of all state funds due the noncomplying school district. The superintendent of public instruction shall use his discretion in determining when a district is or is not making a good faith effort to comply with the laws stated above. The funds withheld and any other penalties assessed shall be reinstated upon a decision of the state superintendent of public instruction concerning the individual school district's intent and degree of compliance. To avoid sanction the local school district is required to expend for each handicapped child at least that amount of regular district and state funds that is expended on a per student basis throughout the school district.

P

STATE PLAN AMENDMENT
EHA Title VI - Part B

Addendum to State Guidelines for Special Education

Division of Special Education and
Student Support Systems

West Virginia
Department of Education

Approved May, 1975

West Virginia

II. PROCEDURAL SAFEGUARDS
(EHA-B: 613(a) (13))

Due Process Guarantees. The following due process procedures have been adopted by West Virginia to comply with Section 613 (a) (13) (A) (i)-(iv) of EHA-B, as amended by P.L. 93-380. These procedures are applicable for only those children eligible for services under this section of the Act.

Educational Placement Changes - Prior Notice.

1. Whenever a change is proposed in a child's educational placement, or when a parent's request for a different placement for the child is denied, the county education agency must notify the parent within 10 calendar days prior to the proposed action. Such notice shall be presented in writing, via certified mail, return receipt requested.

2. The written notice shall:

   a. Describe in detail the proposed or requested action and the reasons why such action is deemed appropriate or inappropriate for the child.

   b. Specify any tests or reports upon which the proposed or requested action is based.

   c. State that school files, records, and reports pertaining to the child will be available for inspection and copying at reasonable cost.

   d. Give the reasons why alternative placements are not appropriate for the child when the proposed or requested action involves placement or denial of placement.

   e. Indicate the opportunity to obtain an independent evaluation of the child and including the names, addresses and telephone numbers of appropriate agencies where such services can be obtained. Public agencies providing such services at minimal or no cost will also be listed.

   f. Encourage the parent to contact the county director of special education for a conference to discuss the possible change in placement.

   g. Indicate the right to obtain a due process hearing if there are objections to the proposed or requested action that cannot be resolved in a conference between the parents and school officials.

   h. List those agencies in the community from which legal counsel may be obtained for those unable to pay for counsel themselves.

   i. State that the child will remain in the present educational placement until such time as there is a decision following the due process hearing or until a proposed educational placement is accepted by the parties. (In an emergency situation where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by order of the county superintendent of schools.)

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3. If there is any reason to believe that written notice of possible changes in educational placement may not be understood by the parents, the county school system shall take such steps to assure communication with the parents on this matter.

Due Process Hearing. Following written notification, the county director of special education shall arrange a conference with the parents of a handicapped child to discuss any questions that stem from a possible change in educational placement. If agreement cannot be reached through this type of conference, however, and a formal hearing is requested, the following procedure shall be utilized.

1. Request for a hearing.

   A request for a hearing before the county board of education should be made in writing by the parent to the county superintendent, who will be responsible for carrying into effect the following procedures.

2. Scheduling of a hearing.

   a. The county superintendent, upon receipt of a request for a hearing, will contact the parent for the purpose of establishing the time and date for the hearing to be held. The hearing shall occur no less than fifteen (15) days and no more than forty-five (45) days from the receipt by the superintendent of the request for a hearing.

   b. Steps should be taken to assure that the child will remain in his/her present educational placement until the county board of education enters a decision following the hearing (except, that in emergency situations where the health and safety of the child or of other persons would be endangered by continuing the present placement, a change in placement may be made earlier by written order of the county superintendent of schools.)

   c. The parents shall be provided the opportunity to obtain an independent evaluation of the child's educational needs. Public agencies providing such services at minimal or no cost will also be listed.

   d. The parents shall be allowed access to school reports, files, and records pertaining to the child, for inspection and copying at reasonable cost.

   e. The parents shall be given the opportunity to exercise their right to request the attendance at the hearing of any officer, employee or agent of the county education agency or State Education Agency who may have testimony or evidence relevant to the question of the needs, abilities, proposed process or status of the child.

   f. Within five days of the request for a hearing, the county board of education shall provide to the parents and to the school personnel recommending placement at least 15 days prior to the hearing, notification as to the time and place of the hearing.

   g. The county school system shall be responsible for providing an adequate meeting place and a tape recording or other verbatim record of the hearing proceedings.

3. Procedures at the hearing. The due process hearing shall be conducted in accordance with the following procedures:

a. The county board of education, or its impartial designee, will preside at the hearing and will conduct the proceedings in a fair and impartial manner to the end that all the parties involved in the hearing have an opportunity to present their evidence and testimony.

b. The parents and the school personnel recommending placement may have representatives, including but not limited to legal counsel or other professional persons, attending the hearing.

c. The hearing shall be closed to the public unless the parents request an open hearing.

d. The parents and the school personnel recommending placement, or respective representatives, have the right to present evidence and testimony.

e. The parents and the school personnel recommending placement and their respective representatives should have an opportunity to confront and question all witnesses at the hearing.

f. If the child is over the age of majority, he or she shall have the right to attend the hearing.

g. If the child has not reached the age of majority, the parents should have the right to determine whether he or she will attend the hearing, except that upon a finding by the county board of education that attendance by the child would be harmful to his/her welfare, the child may be excluded from portions of or the entirety of the hearing.

h. The burden of proof as to the appropriateness of any proposed placement, as to why more normalized placement could/could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any test or evaluation procedure, will be upon the school personnel recommending placement.

i. A tape recording or other verbatim record of the hearing shall be made.

j. At all stages of the due process procedures, interpreters for the deaf when needed, and interpreters fluent in the primary language of the home when needed, shall be provided at public expense.

4. Decision of the county board of education. Within thirty (30) days the county board of education's decision shall be issued in accord with the following requirements:

   a. Such decision shall be in writing and should be sent by certified mail to the parents and to the school personnel recommending placement.

   b. The decision of the county board of education shall include findings of fact, conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed educational program, it shall include a statement as to what is an adequate and appropriate educational program for the child. If the decision is to approve a proposed educational program, it shall include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs.

   c. The decision of the county board of education shall be based solely on evidence and testimony presented at the hearing.

d. If the county board of education feels that insufficient material precludes any decision making, it may continue the hearing or reschedule it to any convenient time within the limitations of 2a above. It should in this case indicate to both parties the type of information or materials they are lacking. It may request additional written evidence or briefs, prior to rendering its decision.

e. A summary of the proceedings at the hearing shall be made, into which should be included any materials or statements specifically requested by any of the parties to appear in the record, and such summary shall be made available to the parties to the hearing.

f. Subject to procedures for administrative or judicial appeal, the decision of the county board of education is final.

5. Surrogate parents. In order to provide every child eligible for a public education with the protection of procedural due process, even under circumstances where a child's parents or guardians are not known, are unavailable, or the child is a ward of the State, each child will be assigned a parent surrogate according to the following procedures:

   a. Recruitment and training. The State Department of Education, Division of Special Education, will recruit, train, and maintain a registry of eligible persons who can serve as surrogate parents.

   b. Selection by Standing Board. Surrogates will be approved by the State Superintendent of Schools from a list of people recommended by the Department of Education, Division of Special Education. The State Advisory Council for Exceptional Children will assist the Division of Special Education with the recruitment of people to serve as surrogate parents. This Council is broadly representative of persons concerned with the education of handicapped children, including parents and others concerned with the education of handicapped children.

   c. Qualifications of surrogates. Persons selected as surrogates will (1) have no other vested interest that would conflict with their primary allegiance to the child they would represent, (2) be committed to personally and thoroughly acquaint themselves with the child and the child's educational needs, (3) be of the same racial, cultural, and linguistic background of the children they represent, and (4) be familiar with the educational system within the State.

   d. Accessibility to children. Persons to serve as surrogates will be selected to assure adequate representation of the entire State so that they will be readily accessible to the children that they represent.

   e. Procedures for assigning surrogates. Assignment of a surrogate to a particular child should be made according to the following procedures:

      1. Any employee of a county education agency, State Department of Education, residential school or hospital, any physician, any judicial officer, or any other person whose work involves education or treatment of children who knows of a child possibly needing special education services and knows that the parents or guardians are not known, unavailable, or that the child is a ward of the State, should file a request for assignment of a surrogate to the child with the child's county education agency with a copy of the request to the State Department of Education.

   2. In an effort to determine whether or not the parents or guardians are in fact unknown, unavailable, or the child is a ward of the State, the county education agency should send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.

   3. The county education agency should request from the State Department of Education the assignment of an official to weight the evidence and determine whether or not the parents or guardians are unknown, unavailable, or the child is a ward of the State. This determination should be completed within 30 days following receipt of the original request for a surrogate; and the finding of the official should be sent to the county education agency and the State Department of Education. If the need for a surrogate exists, such assignment should be made by the State Department of Education within 10 days.

   4. Once assigned, the surrogate should represent the child at least through the time of the first periodic review of the child's educational placement.

   5. Surrogates should not be assigned to children who have reached the age of majority.

6. Definitions.

   a. Parent. The term "parent" includes a natural mother or father, an adoptive mother or father, a legally appointed guardian, a surrogate parent for a child appointed pursuant to procedures set out herein. The term "parent" also includes the child if he has reached the age of majority.

   b. Notification. Terms such as "notice" and "notification" include (1) written statements in English and in the primary language of the parents' home, and (2) oral communication in the primary language of the home.

   c. Days. Means calendar days.

   d. Surrogate parent. Means a person appointed to act in place of parents or guardians when a child's parents or guardians are not known, are unavailable, or the child is a ward of the State. Surrogate parents will not be employees of the State Department of Education or the county education agency involved in the education of children. The function of the surrogate parent shall be to represent the child's interest in the same way that a parent or guardian would be expected to represent the child's interest.

   e. Special education services. Means services provided under West Virginia's mandate for exceptional children. Appropriate services are reflected in the West Virginia Guidelines for Special Education.

   f. Educational placement change. The enrollment in, or termination of enrollment in, special education classes as provided for exceptional children in the School Laws of West Virginia, Chapter 18, Article 20.

II. PROCEDURAL SAFEGUARDS
(EHA-B: 613(a)(13))

B. **Least Restrictive Alternative.** Following are the procedures to insure that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily:

1. The West Virginia Department of Education will disseminate to county education agencies throughout West Virginia the following statements on least restrictive alternatives:

   a. Philosophy. Least Restrictive Alternative means that to the maximum extent appropriate, handicapped children are educated with children who are non handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes cannot be achieved. When a handicapped child must be assigned to a special program, educational goals should be specified; and when these goals are met, the child should be returned to as near to normal setting as is possible.

   b. Program alternatives. The West Virginia Department of Education encourages a variety of program alternatives to meet the varying needs of handicapped children. These alternatives include:

      (1) Regular program placement

      (2) Resource room placement

      (3) Itinerant teacher services

      (4) Part-time special classes

      (5) Full-time special classes

      (6) Special centers or schools

      (7) Homebound instruction

      (8) Out-of-state instruction

   c. Related points. The West Virginia Department of Education acknowledges the following statements that are included under other procedural safeguards in the Act. These are germaine to the implementation of the least restrictive alternative guidelines set forth by the West Virginia Department of Education. These statements include:

      (1) Prior notice must be given for changes in a child's educational placement.

(2) Use of an interdisciplinary team and multi-sourced, multi-factored evaluations in making decisions about the educational placement of handicapped children. (See Non-discriminatory testing.)

(3) Requiring periodic review of the child's educational status. (See Non-discriminatory testing.)

(4) Development of an educational plan for the child. (See Non-discriminatory testing.)

(5) Development and implementation of a formal appeal process for handicapped children and their parents. (See Due Process.)

2. Implementation Plan. The West Virginia Department of Education requires each county education agency to specify in the Annual County Plan and Proposal the types of alternative programs available in the county, and to indicate the approximate number of children by type of handicap who are served by each program alternative.

   a. When there is evidence to suggest that a county education agency is not following the least restrictive alternative (e.g., that children are generally being unnecessarily educated in more, rather than less, restrictive alternatives, or being placed in a less restrictive alternative, or when change is appropriate), the West Virginia Department of Education will assist the county with suggestions to correct the situation -- based on approved State Board of Education Guidelines for Special Education.

   b. The West Virginia Department of Education will provide inservice training and technical assistance to county education agencies on both an individual basis and through regional and statewide conferences. Division of Special Education Specialists, Regional Education Agency Specialists and the MELRS ALRC/RRC staff will be responsible for such training.

   c. The West Virginia Department of Education will assure that handicapped children served by the Division of Special Education's out-of-state instruction program, as well as children served at the West Virginia Schools for the Deaf and the Blind, will be served in a least restrictive alternative whenever possible.

   d. The West Virginia Department of Education will protect children from the indiscriminate and uncritical adoption of "regular education" for all handicapped children by assuring the efforts set forth in 2b.

3. Cooperation Between Regular and Special Education. To enhance articulation and cooperation, the West Virginia Department of Education will:

   a. Provide statewide special study institutes to regular educators.

   b. Provide regional special study institutes for regular educators.

   c. Provide State Department of Education staff members with information concerning educational needs and provisions for handicapped children.

4. Special Education Advisory Committees. A State level Advisory Committee for Exceptional Children has been created by State statute and county special education advisory committees are encouraged through State Guidelines. Efforts will

be made to disseminate information concerning least restrictive alternatives to all such groups and assistance in implementing this concept throughout West Virginia will be provided by the Division of Special Education in consortium with services from the Mid-East Learning Resource System, Area Learning Resource Center/Regional Resource Center programs.

5. Inservice Training. Plans have been developed for providing inservice training for regular class teachers, administrators, and supportive personnel for the purposes of (a) providing information on the concept of least restrictive alternative, and (b) improving acceptance of handicapped children in the regular classroom. Institutions designed for this purpose are explained in Part 3 of this section.

II. PROCEDURAL SAFEGUARDS
(EHA-B: 613(a) (13))

C. **Non-discriminatory Testing and Placement.** Following are the procedures that have been adopted by the West Virginia Department of Education to insure that testing and evaluation materials and procedures utilized for purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory:

1. Basic Principles Regarding Evaluation and Placement. The following are several statements which are pertinent to an effective evaluation program and are consistent with the intent of the Act in calling for procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children:

    a. Provisions are made in the Guidelines for parents, teachers, and other professionals to initiate referral requests for evaluation procedures in order to determine the most appropriate educational program for the child.

    b. Clear procedures regarding evaluation should be adopted by each county education agency and made known to parents (e.g., the kinds of tests that are used in evaluations, how long the evaluation of a child usually takes, etc.). The West Virginia Guidelines reflect various tests that should be used.

    c. The various evaluation materials and procedures used for purposes of classification and placement of handicapped children should meet a test of reasonableness in the eyes of competent professional persons; and such material and procedures should be administered by qualified persons under conditions which are conducive to the best performance of the child.

    d. Parents should be given a full oral and written report of the results of the evaluation.

    e. Prior notice must be given to parents whenever decisions are to be made which will affect the educational placement of their child — including decisions based on both the initial evaluation and all subsequent reviews; and permission must be obtained from the parents before such decisions are implemented. (See Due Process.)

    f. The intent or effect of the evaluation should be the development of an educational plan for the child, based on a description of his/her strengths and weaknesses. Whenever possible, parents should be encouraged to participate in the development of the educational plan for the child.

2. Comprehensive Assessment. Procedures adopted for the assessment of a handicapped child in a county education agency will be multi-factored and multi-sourced, in order to provide a comprehensive view of the child from the perspective of the school, home, and community.

    a. School Information. Information from the school should include but not be limited to an assessment of the following areas:

        1. Educational Functioning. An assessment should be made of the child's educational functioning in relation to the academic program of the school;

and the results of this assessment should be expressed in terms of both the child's strengths and weaknesses. The assessment should be comprehensive, using a full range of available instrumentation and observations, including diagnostic tests and other appropriate formal and informal measurements.

Whenever intelligence tests are administered, steps should be taken to assure that the IQ score, per se, will not be used in making inferences about the child's level of intelligence or learning potential; instead the full test should be interpreted by the qualified examiner who administered the test.

Any "classification" of students for educational purposes should consist of a description of the types of educational programs and services needed by each child to learn to the fullest extent possible in the school setting.

2. Psychomotor and Sensory Development. An assessment also should be made of the child's psychomotor and sensory development, through the use of developmental scales and audiological and ophthalmological or optometric examinations.

3. Adaptive Behavior. An assessment also should be made of the child's adaptive behavior in the school setting based on observations and records, and, where appropriate, the use of adaptive behavior scales.

b. Home Information. Information from the home should include (1) the child's adaptive behavior in the home, as perceived by his parents or guardians, and (2) the child's health and developmental history.

3. Adaptive Procedures for Children with Linguistic or Cultural Differences. Appropriate techniques should be utilized when for reasons of language differences or deficiencies, non-adaptive behavior, or extreme cultural differences a child cannot be evaluated in standard testing situations.

No assessment will be attempted when a child is unable to respond to the tasks or behavior required by a test because of linguistic or cultural differences unless culturally and linguistically appropriate measures are administered by qualified persons. In those cases in which appropriate measures and/or qualified persons are not available, appropriate educational programs should be used until the child has acquired sufficient familiarity with the language and culture of the school for more formal assessment.

These evaluation procedures also should assure that persons interpreting assessment information and making educational decisions are qualified to administer the various measures and qualified to take cultural differences into account in interpreting the meaning of multiple sets of data from both the home and the school.

4. Special Education Advisory Committee for Evaluation and Placement. The development of the educational program for a child should be the responsibility of an advisory team within the county education agency. The Division of Special Education will provide assistance to county education agencies in the development of the advisory committee. Some points to be considered in using such a committee are as follows:

a. Composition. The committee should be composed of all persons who directly or indirectly are involved in or influence the child's educational success. Persons to be included are indicated in the West Virginia Guidelines.

b. Review of Instrument and Procedures. The committee should accept responsibility to review the procedures, instruments and observations used to determine each child's level(s) of functioning and behavior and should evaluate the appropriateness of such procedures, instruments and observations with regard to each child's particular socioeconomic level and ethnic background.

c. Recommendations for Placement. The committee is responsible for evaluating all pertinent information about the child and making recommendations concerning the most advantageous placement possible. (The term "placement" does not necessarily imply removal of the child from the regular school program, but may mean providing for him/her appropriate learning environments through alternative special services available in the regular school.) Some alternative program assignments recommended by such a committee might include:

-- those immediately available in the county,

-- programs developed by the county to meet the unique needs of the individual child,

-- contracts with other counties or local agencies to provide a needed program, and

-- funds provided to send a child to a special program located elsewhere.

5. Re-evaluation. Procedures also should be established to insure that there will be a continuous review of a child's placement to determine whether the child should:

a. Remain in his present program using the instructional pattern set for the child originally;

b. Remain in his present program but with a restructured instructional pattern;

c. Be placed in a different special education program to meet educational and/or social needs;

d. Be totally integrated into the regular classroom; or

e. Be offered services elsewhere in or out of the county.

WISCONSIN

Chapter PI 11

RULES IMPLEMENTING SUBCHAPTER IV OF CHAPTER 115, WIS. STATS.

PI 11.01 Definitions
PI 11.02 Referral and screening
PI 11.03 Multidisciplinary team (s) (M-team)
PI 11.04 Placement process
PI 11.05 Exceptional education children records
PI 11.06 Hearings and appeals
PI 11.11 Director
PI 11.12 Assistant director
PI 11.13 Program supervisor - level A
PI 11.14 Program supervisor - level B
PI 11.15 Program support teacher
PI 11.18 Educational services for school-age pregnant girls and mothers
PI 11.19 Supportive services: physical and occupational therapy
PI 11.20 Diagnostic teacher
PI 11.21 Self-contained complete program type
PI 11.22 Self-contained modified program type
PI 11.23 Self-contained integrated program type
PI 11.24 Resource room program type
PI 11.25 Itinerant program type
PI 11.26 Homebound instruction program type
PI 11.27 Program levels

PI 11.01 Definitions. (1) LEGISLATIVE INTENT. The legislature recognized that many children and youth, 3 to 21 years of age, have not experienced appropriate educational opportunities because comprehensive services were not available through all public schools which were commensurate with their EEN. Subchapter IV, chapter 115, Wis. Stats. was enacted to ensure the identification of such needs and the development of services for children to appropriately serve these needs.

(2) BASIC TENETS. (a) All children and youth in the public and private sectors, who are in need of special education services, shall be identified. The legislature has specified that the identification process shall include screening, referral and M-team procedures.

(b) Section 115.76 (3), Wis. Stats. defines children and youth with EEN as: "'Child with exceptional educational needs' means any child who has a mental, physical, emotional or learning disability which, if the full potential of the child is to be attained, requires educational services to the child to supplement or replace regular education. Children with the following conditions, in addition to children with such other conditions as the state superintendent determines, may require educational services to supplement or replace regular education:

(a) Physical, crippling or orthopedic disability.

(b) Mental retardation or other developmental disabilities.

(c) Hearing impairment.

(d) Visual disability.

(e) Speech or language disability.

(f) Emotional disturbance.

(g) Learning disability.

(h) Pregnancy, including up to 2 months after the birth of the child or other termination of the pregnancy.

(i) Any combination of conditions named by the state superintendent or enumerated in pars. (a) to (h)."

(c) Children and youth with no EEN who require alternative educational programming shall not be included within the parameters of section 115.76 (3), Wis. Stats. EEN excludes conditions described as special educational needs (SEN) resulting primarily from poverty, neglect, delinquency or cultural or linguistic isolation from the community at large.

(d) The department shall utilize the U.S. office of education incidence rate of 10-12% of the district population as having EEN since this rate is comparable to experience with incidence findings in Wisconsin. The division shall continue to utilize this estimate for program and fiscal planning and for monitoring attainment of legislative goals. Exceptions to this overall incidence limitation and to incidence rates for individual program areas shall require local district provision of M-team evidence which clearly demonstrates incidence rates which exceed state and national norms. This may be accomplished by department staff conducting an on-site review. This evidence shall be submitted and approved by the division prior to program expansion in excess of state norms.

(e) The broad process of referrals, obtaining parental approvals, the M-team action and board placement recommendations shall be included in the district's plan (section 115.85 (3), Wis. Stats.). This plan and procedures for its implementation shall include timelines for mass screening, parental approvals, referral, the M-team process and board recommendations on placement.

(f) Definitions of terms utilized in the rules.

1. Administrator means school district administrator.

2. Behavioral records means those pupil records defined in section 118.125 (1) (b), Wis. Stats. including psychological tests, personality evaluations, records of conversations, any written statement concerning a child's behavior, achievement or ability tests, physical health records and any other pupil records which are not progress records.

3. Board means school board.

4. Boarding home means homes operated by an LEA operating special education programs or services, or both, and used 5 days a week to care for non-resident children being served in that program or service.

5. Days means calendar days unless otherwise specified.

6. CESA means cooperative educational service agency.

7. CHCEB means county handicapped children's education board.

8. Child advocate means any person representing the parent during the M-team process and at a board hearing.

9. Child study team and pupil services team means a team, other than the M-team, of professional support personnel in the district.

10. **Cooperative agreement**, 66.30 means special education programs operated by 2 or more districts or CHCEBs under a cooperative agreement as provided in section 66.30, Wis. Stats.

11. **Department** means department of public instruction unless otherwise specified.

12. **Director** means a Wisconsin level A-certified director of special education.

13. **District** means school district of residence unless otherwise specified.

14. **Division** means division for handicapped children unless otherwise specified.

15. **EEN** means exceptional educational needs as defined in section 115.76 (3), Wis. Stats.

16. **Full-time** means that the person is employed for a full day of employment, 5 days a week.

17. **Half-time** means that the person works half-time in terms of hours.

18. **Hearing** means an official private or public proceeding conducted by a board or a hearing officer. It shall be conducted according to the procedures contained in PI 11.06.

19. **Hearing officer** means a person appointed by the board to conduct the hearing according to the procedures contained in PI 11.06.

20. **LEA** means a local educational agency, including a district, CESA or CHCEB operated by public schools.

21. **Level A license** means a Wisconsin special education administrative license.

22. **Level B license** means a Wisconsin special education administrative license.

23. **Local**, in terms of program placement, means not only the resident district, but programs in adjoining districts, CESAs, CHCEBs and the state residential schools.

24. **M-team** means multidisciplinary team.

25. **Non-EEN** means non-exceptional educational needs, e.g., needs which are not exceptional as defined in section 115.76 (3), Wis. Stats.

26. **Notice** means written notice sent by mail which shall be complete upon mailing.

27. **Parent** includes the term legal guardian and the plural of each where applicable.

28. **Personnel/program criteria** means those criteria utilized by the department and required for reimbursement.

29. **Program designee** means the person designated by the board to administer and coordinate all elements of programs and services for

children with EEN. This person does not hold a level A or level B license.

30. Program unit means a certified special education teacher with an enrollment list of children having EEN as defined in section 115.76 (3), Wis. Stats.

31. Superintendent means the Wisconsin superintendent of public instruction.

32. Supervisor means a person who has a level A or level B special education administrative license.

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76.

PI 11.02 Referral and screening. (1) Referral. (a) Purpose. The individual report required by section 115.80 (1), Wis. Stats. shall provide for the identification of those children with suspected EEN:

1. Children who were not previously known to school authorities.

2. Children who were not identified through the screening process.

3. Children whose EEN developed after continued enrollment in school.

(b) District referral responsibility. Each district shall establish a written procedure to expedite referrals from parents and other persons as provided in section 115.80 (1), Wis. Stats. These procedures shall be included in the overall written district plan for the education of children with EEN and shall include the following:

1. The administrator shall inform those persons described in section 115.80 (1) (a), Wis. Stats. of referral and M-team procedures attendant upon this law. This may be accomplished through the use of radio announcements, newspaper or newsletter articles, etc.

a. If referrals are made to the division, division staff shall communicate with the person making reports and shall provide information relating to M-team procedures and the contact persons in their respective districts for reporting children with suspected EEN pursuant to section 115.80 (1) (a), Wis. Stats.

b. Before a referral is made, parents shall be informed. Persons described in section 115.80 (1) (a) shall document, in writing to the board, the manner in which the parent was informed. If the parent makes a referral, the district shall note the date on which the referral was made for inclusion as part of the official hearing record.

2. Inservice programs shall be developed for certified district professional employes, pursuant to section 115.80 (1) (b), Wis. Stats., to familiarize them with behavioral descriptors which, in terms of frequency, chronicity or severity might indicate an EEN. These employes shall be furnished with information concerning current referral procedures.

a. Certified district professional employes making a referral shall send to the child's parent a notice informing the parent that a report will be made to the board.

3. The referral procedure shall clearly distinguish between suspected EEN and suspected non-EEN in order to avoid the need for

M-team consideration of every school-related problem. Where there is not a reasonable basis to believe that a child has EEN, the child shall be referred to child study or pupil services personnel as a child with suspected non-EEN. Should the child appear to have EEN during the child study or pupil service personnel's involvement with the child, these personnel or other personnel shall refer that child for suspected EEN.

4. If a single referral form is used, the referral form shall include separate places of entry; one to be labeled "suspected EEN" and the other "suspected non-EEN." The referring person shall indicate on the form whether the child has suspected EEN or suspected non-EEN. To assist in this determination, the referring person may consult with other professionals in the district.

5. The district shall not deny any rights afforded under subchapter IV, chapter 115, Wis. Stats. to any child excluded from school.

(2) SCREENING. (a) 1. Districts shall provide screening procedures for all children enrolled in public school between the ages of 5 and 21 years who are suspected of having EEN. Districts shall provide screening opportunities to children who are district residents prior to entry into school upon parental request. Public media techniques shall be utilized to inform parents of this opportunity.

2. Screening techniques for children with EEN may be coordinated with other education and health-related programs and screening procedures in the district and local community, e.g., ESEA Title I; Special Education Needs (SEN); Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

3. The director or the board's program designee shall be responsible for the screening elements related to children with EEN but not necessarily for the district's total screening program.

(b) Every district shall have a plan for screening children for EEN and shall specify procedures for the following 4 groups:

1. Children who are entering school for the first time.

2. Transfer students new to the district.

3. Students currently enrolled in the district.

4. Children below school-entry ages.

(c) The screening procedures shall include the various techniques, both formal and informal, used to identify children with suspected EEN with the exception of pregnancy.

(d) Screening shall be a continuous process implemented throughout the school year to accommodate to new entries and to information obtained through informal observations and teacher evaluations.

(3) DIVISION RESPONSIBILITY. The division shall provide consultative assistance to LEAs in the development of the screening plan as it relates to EEN.

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76.

PI 11.03 Multidisciplinary team(s) (M-team). (1) INTENT. The M-team shall determine if the child has a mental, learning, emotional or physical disability; shall determine the handicapping condition (s) as enumerated in section 115.76 (3) (a) through (i), Wis. Stats.; and shall determine if the handicapping condition (s) requires special educational services to supplement or replace regular education and therefore that the child has EEN. It shall be constituted in order to provide expertise required to assess the learning needs of children with EEN. Findings and recommendations shall be made by the M-team to assist the board through the director or program designee in making placement decisions appropriate to each child's needs.

(2) BOARD RESPONSIBILITY. The board through the administrator contingent upon PI 11.03 (2) (a) and (b), shall appoint the district's M-team (s).

(a) When there is a level A director, the director shall be administratively responsible for the M-team process.

(b) If there is no director, a program designee shall be appointed by the board.

(c) Upon parental approval, referrals to the M-team from both the public and private school sectors shall be honored.

Note: It is the department's current legal opinion that M-team assessments may be permitted in the private sector.

(3) COMPOSITION. Various professional areas of expertise are necessary to assess and program for a child's EEN. M-team membership shall be determined by the EEN which a particular child is believed to have. M-team (s) shall have at least 2 members who have expertise in assessment and programming for the EEN of the child being evaluated. In those instances in which a child is suspected to have multiple handicapping conditions, specialists certified to teach in each of the suspected handicapping conditions shall be members of the M-team. It shall be the responsibility of the director or the program designee responsible for M-team composition and functioning to ensure that both members are expert in both assessment and programming. This determination of skill shall be based on training, certification and experience.

(a) Special education personnel employed by the district shall be utilized in the formation of the district's M-team (s). CESA personnel contracted by the district shall be construed as district employes for purposes of M-team composition.

(b) At least 2 members of the M-team shall be direct employes of district of residence, including those cases where districts implement cooperative agreements with other districts, CESAs or CHCEBs.

(c) Districts may have need for consultation from other than public school employes to appropriately assess an individual child's EEN. Such consultation may be utilized by the M-team in formulating team recommendations. Personnel other than public school employes shall not be appointed official members of the child's M-team.

(d) Districts may employ additional qualified nondistrict personnel on their M-team (s) on a contractual basis with the following provisions:

1. Such nondistrict personnel shall be contracted for their services as M-team members.

2. As a contracted public school employe, these personnel shall function on behalf of children with suspected EEN and be recognized as representatives of the contracting district. In this contractual capacity, they shall not represent the agency or private facility where they are otherwise employed.

(4) M-TEAM PROCESS. Written parental approval shall be obtained before any action is taken by the M-team. The parent shall be involved and consulted throughout the entire M-team process (appendix A).

(a) The first step of the M-team process shall be to examine all available pertinent data concerning children identified through screening or those referred by individual reports as having a suspected EEN. This process shall be conducted by various district professional employes but shall in every case include one professional staff member with certification to teach in the suspected area of exceptionaltiy. This process shall include information from parents concerning the needs of the child.

(b) Action following the first step shall include:

1. A recommendation for further evaluation of a child's suspected EEN.

2. A determination that the child has an EEN as determined by available data.

3. A determination that the child has other than EEN. Such determination shall be coupled with the following recommendations for alternative service/placement considerations:

a. Consultative services apart from special education to be offered in association with new or continuing regular educational placement.

b. Referral to other departments/individuals within the district responsible for alternative programs, e.g., Special Education Needs (SEN), ESEA Title I, etc.

c. Referral to an appropriate community agency or service to further examine conditions which influence learning, e.g., opthamology, otology, family services, etc.

(c) The parent shall be informed of findings and recommendations concerning the child following the examination of records.

(5) M-TEAM ASSESSMENT. When an M-team has determined that a child has a disability, handicapping condition(s) and an EEN which requires special education, the M-team shall:

(a) Specify in writing and be able to supply the substantiating data concerning the nature and extent of the child's EEN and non-EEN.

(b) Formulate written recommendations for regular and special educational program(s) or service(s), or both, based upon individual needs.

(6) TIMELINE. No more than 90 days shall elapse between the initial date of receipt of the referral form by the district for EEN and the receipt by the parent of the notice of placement decision pursuant to section 115.81 (2) (b), Wis. Stats.

(a) Special cases may require deviation from the 90-day policy. If it appears that the assessment cannot be completed in 90 days, the school district shall inform the parent of the reasons for the additional required time and shall obtain written approval for extension.

(b) In those cases in which parental approval is not given in writing for the extension beyond 90 days, the district shall request approval for the extension from the division.

(c) The receiving district shall examine records of transfer students enrolled in special education programs who were evaluated within the last 3 years. An examination of the student's records by 2 professional district-employed personnel may be sufficient to appropriately place or continue the student in a special education program or service.

(7) PARENTAL CONSULTATION. Upon completion of the M-team's evaluation, a conference shall be scheduled with the parent to communicate the findings and possible special education program or service alternatives, or both. It is not the function of this team to make a formal placement recommendation; this responsibility shall reside with the district's director or the program designee. Parents may have a child advocate accompany them during any phase of the M-team process.

(8) WRITTEN REPORT. The M-team shall submit a written report including findings, an individual educational plan and recommendations to the director or the assigned administrator responsible for the special education program/placement process.

(9) PARENTAL PERMISSION. Written parental permission shall be obtained prior to placement of the child in a special education program (s) or service (s), or both.

(10) PARENT NOTIFICATION. The parent shall be notified in writing of the M-team's recommendations and a brief statement of the reasons for the recommendations (section 115.81 (2) (a), Wis. Stats.).

(11) PARENT NOTIFICATION. The parent shall be notified in writing of the district placement decisions (section 115.81 (2) (b), Wis. Stats.).

(12) REFERRALS OF MINORITY CHILDREN. When utilizing standardized tests, or interpreting the findings, care shall be taken to assure that ethnic or minority groups are not discriminated against due to culturally-weighted items.

(a) For every referral concerning a minority child, a member of that minority shall be allowed input into the M-team's decision-making process.

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76.

PI 11.04 Placement process. (1) If an M-team determines that a child has EEN and recommends that the child be provided special education services, the board through the director or program designee shall place the child in an appropriate special education program according to the following procedures:

(a) Pursuant to section 115.85 (2), Wis. Stats., the board shall not place the child in a special education program until it has consulted with the M-team and secured the consent of the child's parent.

(b) Pursuant to section 115.85 (2) (a), Wis. Stats., if the district, the county in which the child resides or the CESA for the district in which the child resides operates an appropriate special education program or can establish such a program within 30 days of the parent's consent to the board's notice of placement decision, the board shall place the child in that program.

(c) Pursuant to section 115.85 (2) (b), Wis. Stats., if an LEA cannot provide an appropriate program as described in PI 11.04 (1) (b), the board through the director or program designee shall consult with the division to determine whether an appropriate program operated by a public school agency or another public agency (as modified in PI 11.04 (1) (d)) is available in Wisconsin. If such a program can be provided within 30 days of the parent's consent to the placement offer of the board, the board shall place the child in that program. If more than one such program exists, the board shall place the child in a program as near as possible to the place where the child resides.

(d) Pursuant to section 115.85 (2) (c) and (d), Wis. Stats., if it is determined that no public school or public agency in Wisconsin can provide an appropriate program in terms of the definition of local accessibility in appendix H, as described in section 115.85 (2) (a) and (b), Wis. Stats., the board shall consult with the division to determine whether an appropriate program is offered by any private in-state non-sectarian facility as described in section 115.85 (2) (d), Wis. Stats. or by any public or private non-sectarian program in another state as described in section 115.85 (2) (c), Wis. Stats. or authorized in recent court decisions. The child's total EEN and place of residence shall be considered in the board's decision. The board shall place the child in such a private or public educational program in-state or out-of-state only after securing the approval of the superintendent. The private special education service shall be requested to provide evidence, pursuant to section 115.85 (2) (d), Wis. Stats. that its governing board, faculty, student body and teachings are not chosen or determined by any religious organization or for any sectarian purpose.

(e) Pursuant to section 115.85 (2) (e), Wis. Stats., "The school board may place a child with exceptional educational needs in a special education program at the home, residence or other location of the child only if there is a physician's statement in writing that the child is unable to attend school, as required under s. 115.80 (3) (e)."

(f) When the child's needs include extenuating circumstances relating to factors other than the provision of an appropriate special education program, the district shall seek close collaboration with appropriate social agencies, including the Wisconsin department of health and social services, to facilitate meeting the child's total needs.

(g) The superintendent may approve a request for placement of a child with EEN pursuant to section 115.85 (2) (c) and (d), Wis. Stats. in a public special education program operated outside of Wisconsin or in a private in-state or out-of-state special education service with the following provisions:

1. The board shall have followed the placement procedures pursuant to PI 11.04.

2. The superintendent finds, upon a report submitted by the district, that the private program or the out-of-state public program meets standards in the following areas:

a. Instructional and supportive staff certified or certifiable by the department.

b. Program approval criteria, e.g., criteria utilized by the department in approving comparable public school programs.

c. Any other data the superintendent requires to make a valid judgment.

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76.

PI 11.05 Exceptional education children records. (1) INTENT. The department shall collect, maintain and disseminate student records as required by the Family Educational Rights and Privacy Act of 1974. Section II (i) of such policy states: "The Division for Handicapped Children of the Department of Public Instruction will adopt rules and regulations to be followed by local multidisciplinary teams to ensure parental authorizations for release of relevant pupil records required by the Division for Handicapped Children to fulfill its mandated roles/functions under Chapter 89. Where parental authorization is not received, student data on enrollment and transportation reports shall be submitted accompanied by an identification number meaningful only to the Local Education Agency for student identification purposes."

(2) COLLECTION, MAINTENANCE AND DISSEMINATION OF STUDENT RECORDS. The division, in order to carry out its responsibilities as mandated in subchapter IV, chapter 115, Wis. Stats., shall receive exceptional education pupil records pursuant to the following conditions:

(a) *Parental consent.* The district in its M-team placement and service processes shall indicate to the parent of a child with EEN that the services of the division may be or are needed for immediate or long range consultative, program planning and service purposes as outlined in PI 11.05 (2) (f). The parent shall be encouraged and afforded the opportunity of giving written consent for the district to make their child's records available to the division. The parent shall be given such opportunity under the circumstances enumerated in PI 11.05 (2) (c), (d) and (f). A suggested parental consent form is available from the department for duplication or modification by the district if desired.

(b) *Identification numbers.* If the parent fails to give consent for release of pupil records with the child's name, districts shall supply the requested records deleting the child's name but identifying such records with an appropriate identification number. The district shall utilize the identification number system provided by the division for assigning individual identification numbers (appendix B).

(c) *Enrollment reports.* LEAs operating special education instructional units for children with EEN shall report selected information on the individual pupils enrolled in such units by name or identification number. The same information shall be reported to the division on children enrolled after the due date of such enrollment reports.

(d) *Transportation reports.* LEAs requesting approval and reimbursement for the transportation of students with EEN receiving special service shall report the individual pupils by name or identification number.

(e) *District responsibility and concomitant accountability for individual's records.* In addition to any required student records, districts shall maintain as part of the EEN child's record the following:

1. Parental consent for district action pursuant to subchapter IV, chapter 115, Wis. Stats.

2. Any data utilized by the M-team to reach decisions, e.g., evaluations, reports, pupil records.

3. The findings and recommendations of the M-team.

4. The placement decision of the board, director or program designee.

5. The individual educational plans prescribed for the child with EEN.

6. All records called for in subchapter IV, chapter 115, Wis. Stats. and by any rules or regulations promulgated by the department to implement its role and function under this chapter.

7. Medical prescriptions required to substantiate any health treatment services provided under section 115.80 (3) (e), Wis. Stats.

8. Medical verifications required to provide homebound instructional services and special programs for school-age pregnant girls and mothers as stipulated in section 115.80 (3) (e), Wis. Stats.

9. Medical evaluations, if used to substantiate determination of disability. The division strongly recommends the continuing involvement of medical personnel in the evaluation of children with EEN, since commonly accepted professional practices require the utilization of qualified medical personnel to determine sensory, mental and physical disabilities.

(f) *Individual pupil records.* When students' educational programs fall within the following situations, their records shall be immediately forwarded to the division pursuant to conditions described in PI 11.05 (2) (a) and (b):

1. Students who are being considered for enrollment in special education services outside the district of residence. In those cases where the districts have made cooperative arrangements with a CESA or are included in a CHCEB or have entered into a 66.30 cooperative agreement, the children so enrolled shall be considered as resident students.

2. Students being considered for enrollment in the Wisconsin school for the visually handicapped and the Wisconsin school for the deaf, or

those facilities operated or supported by the department of health and social services.

3. Students for whom the superintendent has received a formal parental appeal request under the provisions of section 115.81, Wis. Stats. Information submitted to the department shall include the local hearing records.

4. Students with EEN who are either being considered for placement in state or county institutions or residents of such institutions being returned to LEA services.

5. Students for whom a request is made for state tuition support under section 121.79 (1) (c), Wis. Stats.

6. Students for whom districts are requesting the superintendent's approval to place in an appropriate program in another state pursuant to section 115.85 (2) (c), Wis. Stats. or to contract with a private school for the child's education under the provisions of section 115.85 (2) (d), Wis. Stats. When the request for complete pupil records emanates from the division pursuant to PI 11.05 (2) (f) 7. and 8., such records shall be forwarded to the division within 10 days following receipt of a request from the division. The records shall include data as called for in PI 11.05 (2) (e).

7. Students upon whom an official inquiry request, e.g., from a district of residence, parent, guardian, child advocate, legislator or state agency, for state consultation or state legal action has been received.

8. Any child for whom the division requires case data to carry out its functions as called for in section 115.84, Wis. Stats.

(g) *Records*. The division shall not require the submission of complete individual pupil records on resident children enrolled in programs operated individually or cooperatively by the district of residence, except as indicated in PI 11.05 (2) (f).

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76.

PI 11.06 Hearings and appeals. (1) INTENT. The purpose of this section is to ensure that all hearings before the board or its hearing officer and all appeals to the superintendent afford the parties fundamental fairness guaranteed by law. PI 11.06 is intended to implement section 115.81, Wis. Stats. which requires that boards provide parents with a fair hearing before the board or its hearing officer and before the superintendent when conflicts arise over a decision relating to special education for a child.

(2) PARENTAL REQUEST FOR A HEARING. A parent shall file a written request for a hearing with the district clerk of the district in which the parent resides within the time period and for the reasons specified in section 115.81 (1), Wis. Stats.

(3) DISTRICT RESPONSIBILITY UPON REQUEST FOR A HEARING. (a) Upon the filing of the request for a hearing, the board or its designee shall set a mutually acceptable time and place for the hearing. The hearing shall be held within 60 days of the filing of the request for the hearing.

(b) Not more than 30 days prior to the time set for the hearing, the board shall send a notice of the hearing stating the time and place of the hearing and the parent's rights to the parent under section 115.81 (4) and (5), Wis. Stats.

(c) The board may appoint a hearing officer, pursuant to section 115.81 (2) (d), Wis. Stats.

Note: The department strongly recommends the appointment of a hearing officer. That person shall not be an employe of the district and shall have a level A license and have training in hearing procedures. It is preferable to select a hearing officer who has training in the area of exceptionality evidenced by the child whose case is being heard.

(4) CONTENTS OF THE OFFICIAL RECORD. The board or hearing officer shall keep an official record of the hearing which shall contain:

(a) A verbatim record of the proceedings at the hearing together with all exhibits. The record of the hearing may be a tape recording, but shall be transcribed and available to parents upon request in the event of an appeal to the superintendent.

(b) A copy of the notice to the parent that a report will be made to the board, or documentation of the manner in which the parent was informed, pursuant to section 115.80 (1) (c), Wis. Stats. and any information reported to the board under section 115.80 (1) (a) or (b), Wis. Stats. The district shall obtain a copy of the notice or documentation of the manner in which the parent was informed.

(c) Written parental approval for M-team evaluation, pursuant to section 115.80 (3) (b), Wis. Stats.

(d) The written M-team recommendations, pursuant to section 115.80 (3) (e), Wis. Stats.

(e) A copy of the notice to the parent of the M-team recommendations pursuant to section 115.81 (2) (a), Wis. Stats. For recommended form of notice, see appendix C.

(f) A copy of the notice to the parent of the decision of the board or its designee for placement or removal from a special education program, pursuant to section 115.81 (2) (b) and (c), Wis. Stats. For recommended form of notice, see appendix D.

(g) Written parental consent to a change of program or, if no parental consent is given, written record of the board's reasons for changing the program prior to the hearing or pending the board's decision on appeal, pursuant to section 115.81 (3), Wis. Stats. Program change without parental consent shall be made only if the health or safety of the child or others would be endangered by delaying the change in assignment. For recommended forms of parental consent and early program change notice, see appendix E.

(h) A copy of the notice to the parent of the hearing. For recommended form of notice, see appendix F.

(i) Written parental request for a hearing on program placement or removal, pursuant to section 115.81 (1) (a), Wis. Stats.

(j) A copy of the referral form for EEN. For recommended form of notice, see appendix G.

(k) The written record of any independent examination of the child carried out at the parent's request, pursuant to section 115.81 (5), Wis. Stats., if submitted into evidence at the hearing or otherwise released to the board.

(5) PRESENTATION OF EVIDENCE. (a) The board of its designee shall present the evidence upon which the placement or removal decision was based.

(b) The parent or parent's advocate shall present any evidence relevant to the decision of the board or its designee.

(c) The parent shall be given an opportunity to examine and cross-examine witnesses. A presiding officer may, in order to develop the facts, or to reach a decision, examine any witness or call any witness, including any person skilled in the suspected area of exceptionality. Costs incurred in the provision of witnesses on the behalf of the board shall be the board's. The presiding officer may determine the order in which witnesses are called.

(6) POSTPONEMENT. The presiding officer may postpone, recess or adjourn the hearing for a period not to exceed 15 days. It shall not serve to extend the period by which the board shall hold the hearing beyond 60 days as provided in PI 11.06 (3) (a).

(7) HEARING OFFICER'S REPORT. If a hearing officer presides at the hearing that person shall issue a written report which shall identify the parties, state the purpose of the hearing, review the evidence introduced, summarize the points of contention between the parties and recommend a decision. Copies of this report shall be sent to the parent and the board. The hearing officer shall issue a report within 10 days after the close of the hearing.

(8) BOARD DECISION. The board shall issue its decision within 30 days of the close of the hearing, pursuant to section 115.81 (6), Wis. Stats. The board shall, within 24 hours of its decision, mail a copy of such decision to the parent. The decision shall include a statement of facts and conclusions upon which the board's decision was based. The decision shall also specify the parent's right to appeal within 30 days from the day of issuance of the board's decision to the superintendent under section 115.81, Wis. Stats. If the board does not make a decision within 30 days after the parent has filed a written appeal, the placement decision shall be deemed affirmed.

(9) APPEAL OF BOARD DECISION TO SUPERINTENDENT. (a) The parent may file a written appeal of the board decision to the superintendent within 30 days from the day of issuance of the board's decision, pursuant to section 115.81 (7), Wis. Stats. The appeal shall name the parties and shall give a brief statement of the parent's reasons for appealing. Upon receipt of an appeal, the superintendent shall request the official record from the board.

(b) The superintendent shall issue a decision based on the official record within 30 days after the parent has filed a written appeal. If the superintendent does not make a decision within 30 days after the parent has filed a written appeal, the decision appealed from shall be deemed affirmed. The official record shall be returned to the board after the superintendent has made a decision.

(10) Appeal of the superintendent's decision to the court. Pursuant to section 115.81 (8), Wis. Stats., within 30 days from the day of issuance of the decision of the superintendent, the parent may appeal the decision to the circuit or county court in which the child resides.

(11) Report. If no appeal to the superintendent is made within 30 days of issuance of the board's decision, the district shall send to the division a report including those elements listed in PI 11.06 (7).

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76; am. (7), Register, February, 1976, No. 242, eff. 3-1-76.

PI 11.11 Director. (1) Policy. To ensure that all children with EEN receive appropriate special education services, the LEA may organize special education services into an administrative structure under a level A-certified director. Special education programs shall be implemented through one or more of the following administrative structures:

(a) *District.* Special education programs operated by a district and administered by a director directly employed by the district.

(b) *District.* Special education programs operated by districts and administered by a director employed by the CESA and contracted by the district. The director shall be considered a district director for each district. PI 11.11 (4) (a) shall be applicable to this section.

(c) *CHCEB.* Special education programs operated by a CHCEB and administered by a director employed by the CHCEB.

(d) *Cooperative agreement (66.30).* Special education programs operated by 2 or more districts or CHCEBs through a 66.30 cooperative and administered by a director employed under the 66.30 cooperative agreement.

(e) *CESA.* Special education programs operated by a CESA and administered by a director employed by the CESA.

(2) Eligibility. The services of a full or part-time director may be utilized when the LEA becomes eligible for reimbursement according to the following:

(a) A district operating special education programs attains the necessary personnel/programs required for state reimbursement of special education leadership personnel (Table 1 following PI 11.11).

(b) A district attains the necessary personnel/program criteria located within the district but operated by a combination of LEAs. Units shall not be duplicated for count for directors.

(c) An LEA operating the program shall obtain the necessary personnel/program units required for state reimbursement of special education leadership personnel (PI 11.11(3)).

(d) In areas of potential program unit growth based on incidence, a director shall be considered for approval by the division for program development for one calendar year.

(3) Reimbursement. The department shall reimburse the employing LEA for the salary and fringe benefits of full-time special education leadership personnel at 70% when the program/personnel

Rules and Regulations Governing
Programs and Services for
Handicapped Children in Wyoming School Districts

April 10, 1975

Wyoming State Department of Education
Robert G. Schrader
State Superintendent of Public Instruction

These Rules and Regulations apply to all Wyoming school districts and to all programs and services required under the Wyoming Education Code.

Chapter X

Requirement for Full Educational Services

Section 1. Legislative Mandate. The 40th Wyoming Legislature mandated that every school-age child in Wyoming with a "mental, physical or psychological handicap or social maladjustment which impairs learning shall be entitled to and shall receive a free and appropriate education in accordance with his capabilities." The mandate further states that each school district shall "provide for the appropriate diagnosis, evaluation, education or training, and necessary related services for such children" residing in the district. "The State Board, jointly with the board of trustees of each school district, shall have general supervision and responsibility for the education of all children in the state with such handicaps, and the State Board shall adopt reasonable rules and regulations to assure that each child receives a free and appropriate education in accordance with his capabilities." (Wyoming Education Code of 1969, Sections 284, 285, 286)

Section 2. Full Service Implementation Date. To implement the legislative intent, each Wyoming school district shall implement an organized program that, by September 1, 1979, results in the provision of appropriate educational services for each school-age handicapped child who resides in the district, regardless of the severity of the child's handicaps. It is the responsibility of the district to designate a person to coordinate the program.

Chapter XI

Local School District Regulations and Procedures

Section 1. Scope of Regulations and Date to be Submitted. By August 31, 1976, each school district shall adopt, submit to the Office of Exceptional Children and implement local regulations and procedures regarding the operation of the district's educational programs and services for handicapped children. The local regulations must include but are not limited to provisions for:

a. normalization of educational experiences for handicapped children.

b. identification of all school-age handicapped children who are residents of the district

c. assurance of the due process rights of children and their parents, including (1) parental approval of special services and instructional programs, (2) appointment of a surrogate parent when the child's parents or guardians are not known, are unavailable or when the child is a ward of the state, (3) parental review of relevant school records and (4) opportunity for an impartial due process hearing.

d. referral of children for special services.

e. assessment of children.

f. individual educational plans for handicapped children.

g. appointment and functioning of at least one Child Study Committee or equivalent group to facilitate the evaluation, placement, review and reassignment of handicapped children.

h. graduation of handicapped youths from high school.

i. in-service preparation for all staff members in the education of handicapped children.

The district has considerable latitude in determining the content of its regulations; however, some specific criteria are necessary. These criteria are stated in the text which immediately follows the subsection titles. The subsections in parentheses contain suggestions the district may wish to consider in preparing its regulations.

Section 2. Normalization of Educational Experiences.

a. Special instructional programs and services are components of a supportive system designed to complement regular education. Consequently, all services for handicapped children emanate from the regular classroom. Each school district shall adopt regulations and procedures to assure that, to the maximum extent appropriate, handicapped children are educated in regular classes along with children who are not handicapped; however, placement of handicapped children in regular classes must be appropriate to their needs and must be determined, monitored, re-evaluated and modified by using the same procedures as those outlined in these Rules for handicapped children in special educational programs.

b. Placement of handicapped children in itinerant programs, resource rooms and special classes, and other procedures which remove them from the regular education environment shall occur only when there is clear evidence that the learning problems are of such nature and severity that education in regular classes, even with the use of supplementary resources, cannot be achieved satisfactorily. All placements must be appropriate to the child's needs and provide the least restrictive educational environment appropriate. Educational goals shall be specified and implemented via an individual educational plan. When these goals are met the child shall move progressively through educational environments that are as normal and beneficial as possible, with the ultimate goal, when appropriate, being full-time functioning in regular classes.

Section 3. Child Identification

a. Each school district shall adopt regulations and procedures for implementing and maintaining a system to locate and assess all school-age handicapped children who are residents of the district, including children who are not receiving an education, to determine their educational and related needs and to implement appropriate educational services. The intent should be to identify the children and implement appropriate educational programs and related services at the earliest age practical.

b. (It is suggested that the identification program include pre-school children, school-age children not receiving an education, children identified as handicapped and attending school but not receiving the full educational programs and services they need, children identified as handicapped and receiving services that are not appropriate to their needs, and school-age youths who have left school but who have needs which the school system can meet.)

Section 4. Due Process Assurances. Due process assurances are legal expressions of the dignity and worth of children and of the district's commitment to their healthy development and progress. It is the responsibility of the school district to adopt regulations and procedures concerning:

a. written parental, guardian or surrogate parent approval for child assessment and other special services and instructional programs.

b. appointment of a surrogate parent to serve as an advocate of the child's rights when the child's parents or guardians are not known, are unavailable or when the child is a ward of the state. (This regulation applies only to children whose education is the responsibility of the school district. It does not apply to children who are wards of the state in state institutions.) Appendix A contains suggestions for preparing this regulation.

c. parental, guardian or surrogate parent review of school district records relevant to the child.

d. opportunity for an impartial due process hearing. (Parental, guardian or surrogate parent dissatisfaction with decisions involving due process rights constitutes a basis for parental action; however, since the school district is responsible for providing each child with an appropriate education, the district may also invoke due process when parents, guardians or surrogate parents refuse to cooperate with district recommendations deemed to be in the child's best interest. Regulations adopted by the district, including all due process hearing, shall be in accordance with the Wyoming Administrative Procedure Act, Sections 9-276.19 to 9-276.33, Wyoming Statutes 1957, as amended. Appendix B contains a copy of this Act as it relates to the education of handicapped children.)

e. provision for an independent assessment at district expense if serious unresolved parental, guardian or surrogate parent challenges are made against the validity of the individual assessment provided by the school district.

f. (It is also suggested that parents, guardians and surrogate parents be fully involved in decisions concerning the need for and provision of special services and instructional programs, including those arranged for handicapped children placed in regular education programs.)

Section 5. Referral for Special Services. Regulations and systematic procedures shall be adopted by the district for referring children for assessment who have or who are suspected to have learning and/or behavioral problems which interfere with school performance. The regulations shall provide for the confidential use of information obtained during the referral, assessment and instructional processes.

Section 6. Assessment of Children. Each school district shall adopt regulations and procedures concerning the assessment of children. Each child placed in a special instructional program for handicapped children shall receive an individual assessment conducted by a multidisciplinary team comprised of personnel who are appropriately certificated and endorsed by the Wyoming State Department of Education and/or personnel who are properly licensed to render such services.

a. The assessment shall be conducted using whatever formal and/or informal appraisal instruments and procedures are necessary and appropriate to determine the child's learning problems, assets and deficits and to prescribe an individualized educational program.

b. All assessment materials and procedures shall be selected and administered so as not to be racially or culturally discriminatory.

c. The results of the assessment shall be interpreted to the child's parents, guardians or surrogate parents in language they understand and in ways they can use to cooperate with the school and assist the child's educational progress.

d. When an assessment reveals that a child has been misclassified and/or misplaced as a handicapped child, the school district is obligated to remove all indications of the misclassification and/or misplacement from the child's school records.

Section 7. The Child's Educational Plan.

a. It is the obligation of those who examine the child, whether district personnel or personnel whose services are arranged via special contracts, to translate the information obtained during the assessment process into appropriate written recommendations and meaningful educational prescriptions. The educational plan is a blueprint for providing the child with precise assistance and requires continuous evaluation and up-dating. School districts shall adopt regulations and procedures to assure that an individual educational plan is written, implemented, monitored, evaluated and continuously up-dated for every handicapped child.

b. (It is suggested that the educational plan include long- and short-term goals, measurable objectives to be attained by the child, educational strategies and materials and a program for assisting parents, guardians or surrogate parents with the learning and/or behavioral management of the child. It is also suggested that career education be an integral part of the child's educational plan.)

Section 8. Child Study Committee. The Child Study Committee plays a vital role in the orderly progression of children through regular and special instructional programs.

a. Each school district shall establish at least one Child Study Committee or equivalent group, and adopt regulations and procedures to facilitate the thoughtful evaluation, placement, progress review and reassignment of handicapped children.

b. District regulations shall be adopted concerning the duties and composition of the committee. The duties of the committee shall include, but are not limited to:

(1) reviewing data to determine whether a child meets the eligibility criteria for placement in an instructional program for handicapped children.

(2) designating appropriate instructional placement consistent with the principles of normalization of educational experiences.

(3) reviewing, at least annually, the educational progress of every school-age handicapped child in the district to determine the child's continuation in the program, modification of the program, additional assessment or reassignment.

c. (It is suggested that a Child Study Committee be established in every school in which handicapped children are provided with special instructional services. It is recommended that the core members represent the areas of exceptionality, regular education, pupil assessment, health and administration. The participation of specific individuals capable of making important contributions to the deliberations of the committee is encouraged. Moreover, it is suggested that deliberations of such meetings be maintained in writing and that written summaries of findings and recommendations for each child be signed by the participants and filed in the child's individual folder.)

Section 9. High School Graduation.

a. Each school district, in recognition of the fact that every handicapped child is entitled to the opportunity to graduate shall adopt written policies concerning the graduation of handicapped students from high school. These regulations shall provide for the establishment of reasonable criteria requisite for graduation.

b. (It is suggested that students who meet the graduation criteria prescribed for them be graduated with a standard high school diploma.)

Section 10. In-service Preparation. School districts shall prepare regulations and procedures to assure that staff members of the district receive ongoing in-service preparation in the education of handicapped children. Particular emphasis should be directed to preparing teachers to educate handicapped children who are enrolled in the regular classes.

Section 11. Pupil Records. The Wyoming Public Records Act, Sections 9-692.1 to 9-692.5, Wyoming Statutes 1957, as amended (see Appendix C), and the Buckley Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) set forth requirement to protect the privacy of parents and students relative to school records. The school district's general regulations regarding record maintenance and inspection will also apply in the implementation of these rules.

Chapter XII

General Regulations Regarding the Eligibility of Children

Section 1. Eligibility Criteria. The following general criteria have been established by the State Board of Education for determining the eligibility of handicapped children who, regardless of the severity of their handicaps, are to be placed in special instructional programs for handicapped children.

a. Prior to placing a child in a special instructional program for handicapped children, the district shall obtain written documentation of the need for and appropriateness of the placement via an individual assessment conducted by a multidisciplinary team comprised of personnel who are appropriately certificated and endorsed by the Wyoming State Department of Education and/or personnel who are properly licensed to render assessment services. The team shall validate the presence of a handicap which has impaired or is expected to impair the child's learning. This documentation shall include, but is not limited to, assessment of the child's hearing, vision and current educational functioning (including strengths and weaknesses) in the cognitive, socio-emotional, academic and motor areas, and recommendations concerning the most appropriate placement within the least restrictive educational environment.

(1) A child who is a new resident of the school district and is known to have been in a special education program operated by the sending district, but whose assessment records have not yet been received, may, with written parental, guardian or surrogate parent consent and endorsement of the Child Study Committee, be provisionally placed in a special instructional program for handicapped children until the records are received, for a period not to exceed 25 school days. The child may not be counted toward funding of a special classroom until all eligibility criteria have been met.

b. Prior to placement in a special program for handicapped children, the child's parents, guardians or surrogate parents shall give written consent to the placement. A Child Study Committee or equivalent group must also recommend the placement.

c. A functional individual educational plan, derived from the individual assessment, shall be written and implemented for each child placed in a special instructional program for handicapped children and shall be maintained in a continuing state of evaluation and revision.

d. Placement in a special instructional program for handicapped children shall be made on the basis of an assessment (norm referenced and/or criterion referenced) which is appropriate to the child's age, culture and socio-economic background.

e. A child who does not have adequate usage of the English language to express his or her school-related abilities may be enrolled in a special instructional program for handicapped children only after an individual learning assessment has been conducted by personnel knowledgeable about the child's general culture and fluent in both English and the language in which the child is most competent; when such personnel are unavailable, a language interpreter shall assist communication between the diagnosticians and the child during both assessment and interpretation of the findings and recommendations. When possible, the interpreter should be knowledgeable about the child's general culture.

f. All communication, written and oral, with the parents, guardians or surrogate parents of a child being considered for placement in a special instructional program for handicapped children shall be in the primary language of the home.

g. A systematic program shall be implemented by the district to monitor and evaluate the progress of each child placed in a special instructional program for handicapped children.

h. Each child's continued placement in a special instructional program for handicapped children shall be determined at least annually by a Child Study Committee or equivalent group.

i. Each child enrolled in an instructional program for handicapped children shall be re-evaluated at least every two years; continuation in the program shall end when the child achieves the goals prescribed in his or her educational plan and can function in the regular school program.